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<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</p>			
<p>In re: INNOVATION PET, INC.</p>		<p>CASE NO.: 8:20-bk-13223-SC CHAPTER: 11</p>	
<p>Debtor(s).</p>		<p>NOTICE OF SALE OF ESTATE PROPERTY</p>	

Sale Date: 01/07/2021	Time: 1:30 pm
Location: 411 W. Fourth Street, Courtroom 5C, Santa Ana, CA 92701 (via ZoomGov)	

Type of Sale: ☒ Public ☐ Private

Last date to file objections: 12/24/2020

Description of property to be sold:
Substantially all assets of the Debtor.

Terms and conditions of sale:
See attached.

Proposed sale price: \$ 500,000.00

Overbid procedure (if any):

See attached.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Date: January 7, 2021

Time: 1:30 p.m.

Place: Courtroom 5C

United State Bankruptcy Court

411 West Fourth Street

Santa Ana, CA 92701

Instructions to attend the hearing virtually via ZoomGov will be provided.

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

James C. Bastian, Jr. - Bar No. 175415

Melissa Davis Lowe - Bar No. 245521

SHULMAN BASTIAN FRIEDMAN & BUI LLP

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MLowe@shulmanbastian.com

Date: 12/14/2020

**Statement of Information
in Compliance with LBR 6004-1(c)(4)**

Statement of Information in Compliance with LBR 6004-1(c)(4)

<u>LBR 6004-1(c)(4) Requirement</u>	<u>Information</u>
<i>LBR 6004-1(c)(3)(B)</i> Name and address of the proposed buyer:	RSInnovation, Inc., a Delaware corporation whose address is 1732 Wazee Street, Suite 202, Denver, CO 80202.
<i>LBR 6004-1(c)(3)(C)</i> Description of the property to be sold:	Substantially all assets of the Debtor as more particularly described in the Asset Purchase but generally including (a) all equipment, machinery, inventory, tanks, tooling, molds, furniture, equipment, fixtures, or other tangible personal property, and any warranty rights or claims associated therewith; (b) all leases of equipment, machinery, or other tangible personal property; (c) all contracts, independent contractor agreements, contract rights, license agreements, customer contracts, purchase and sales orders (if any), instruments, royalty agreements, third party guaranties, indemnifications, arrangements and understandings, whether oral or written, to which Seller is a party and which relate to the Purchased Assets and the operation of the Business; (d) all leases of real property, to the extent listed on Schedule 2.1(d); (e) all Permits transferable to Purchaser pursuant to their terms and in accordance with applicable Laws; (f) all intellectual property owned by Seller; (g) all credits, prepaid expenses, deferred charges, advance payments, security deposits and deposits owned, used or held for use by Seller with respect to the Business and any customer pre-paid amounts for services to be rendered by Purchaser after the Closing; (h) all books and records related to the Purchased Assets or the Business, including customer or client lists, files, documentation, records and the related documentation; (i) all claims, indemnities, warranties, guarantees, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent) related to the Purchased Assets or the Business (other than those related to the Excluded Assets or the Excluded Liabilities, or claims on insurance policies of Seller); (j) all deposits and prepayments held by third parties pursuant to any Assumed Contract; and (i) to the extent not listed above, all other personal property of Seller. Assets specifically excluded are listed in the APA and include, among other things, avoidance claims and certain intellectual property owned by one of the shareholders.

<u>LBR 6004-1(c)(4) Requirement</u>	<u>Information</u>
<p><i>LBR 6004-1(c)(3)(D)</i> Terms and conditions of the proposed sale, including the price and all contingencies:</p>	<p>The sale shall be conducted on an all cash basis and an as-is basis, with a total purchase price of \$500,000.00. The Stalking Horse Bidder will deposit a non-refundable \$50,000.00 good-faith deposit and agree to act as the stalking horse bidder and incur expenses associated with such a role, subject to the inclusion of the Break-up Fee in the Bidding Procedures. The Stalking Horse Bidder is also the Lender that is willing to provide postpetition financing of up to \$100,000.00 (the "Loan"). If the Stalking Horse Bidder is the successful bidder, the Loan will be waived. If the Stalking Horse Bidder is not the successful bidder, the overbidder must include in its purchase price the repayment of the Loan and the overbidder will obtain the inventory and receivables procured by the Loan of the Stalking Horse Bidder.</p>
<p><i>LBR 6004-1(c)(3)(E)</i> Whether the proposed sale is free and clear of liens, claims or interests, or subject to them, and a description of all such liens, claims or interests:</p>	<p>The sale will be free and clear of liens, claims and interests of third parties, with such liens, claims and interests to attach to the sale proceeds pending further Court order.</p>
<p><i>LBR 6004-1(c)(3)(F)</i> Whether the proposed sale is subject to higher and better bids:</p>	<p>Yes to the extent the Debtor receives a higher offer.</p>
<p><i>LBR 6004-1(c)(3)(G)</i> Consideration to be received by the Estate, including estimated commissions, fees and other costs of sale:</p>	<p>The Estate is expected to receive no less than \$500,000.00.</p>
<p><i>LBR 6004-1(c)(3)(H)</i> If authorization is sought to pay commission, the identity of the auctioneer, broker, or sales agent and the amount or percentage of the proposed commission to be paid:</p>	<p>Not applicable.</p>
<p><i>LBR 6004-1(c)(3)(I)</i> A description of the estimated or possible tax consequences to the Estate, if known, and how any tax liability generated by the sale of the property will be paid:</p>	<p>Unknown at this time but the Debtor will update all interested parties as to potential consequences prior to the hearing.</p>
<p><i>LBR 6004-1(c)(4)(A)</i> Date which objection must be filed and served:</p>	<p>December 24, 2020.</p>
<p><i>LBR 6004-1(c)(4)(B)</i></p>	<p>In the absence of an objection, an order may be entered authorizing the sale of the Assets without further notice or hearing.</p>

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>James C. Bastian, Jr. - Bar No. 175415 Melissa Davis Lowe - Bar No. 245521 Sarah M. St. John - Bar No. 329335 SHULMAN BASTIAN FRIEDMAN & BUI LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: JBastian@shulmanbastian.com MLowe@shulmanbastian.com SStjohn@shulmanbastian.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Innovation Pet, Inc., Debtor in Possession</p>	<p>FOR COURT USE ONLY</p>
<p style="text-align: center;">UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</p>	
<p>In re:</p> <p>INNOVATION PET, INC., a California corporation</p> <p style="text-align: right;">Debtor(s).</p>	<p>CASE NO.: 8:20-bk-13223-SC</p> <p>CHAPTER: 11 Subchapter V</p>
	<p>NOTICE OF MOTION FOR:</p> <p>MOTION FOR ORDER: (1) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS PURSUANT TO BANK; (2) APPROVING THE ASSUMPTION AND ASSIGNMENT, et al.</p> <p>(Specify name of Motion)</p>
	<p>DATE: 01/07/2021 TIME: 1:30 pm COURTROOM: 5C PLACE: United States Bankruptcy Court 411 West Fourth Street Santa Ana, CA 92701-4593</p>

1. TO (*specify name*): United States Trustee and the parties listed on the attached proof of service
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 12/15/2020

SHULMAN BASTIAN FRIEDMAN & BUI LLP
Printed name of law firm

/s/ James C. Bastian, Jr.
Signature

James C. Bastian, Jr.
Printed name of attorney

1 James C. Bastian, Jr. - Bar No. 175415
Melissa Davis Lowe - Bar No. 245521
2 Sarah M. St. John - Bar No. 329335
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6 SStjohn@shulmanbastian.com

7 Proposed Attorneys for Innovation Pet, Inc., a California corporation,
Debtor and Debtor in Possession

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
11

12 In re

13 **INNOVATION PET, INC., a**
14 California corporation

15 Debtor.

Case No. 8:20-bk-13223-SC

Chapter 11- Subchapter V

**DEBTOR AND DEBTOR IN POSSESSION'S
MOTION FOR ORDER:**

(1) **APPROVING THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR'S
ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, AND INTERESTS PURSUANT TO
BANKRUPTCY CODE § 363(f);**

(2) **APPROVING THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN UNEXPIRED
LEASES AND EXECUTORY CONTRACTS; AND**

(3) **GRANTING RELATED RELIEF INCLUDING
USE OF SALE PROCEEDS TO PAY ACTUAL
COSTS INCURRED AND APPROVING A
BANKRUPTCY CODE § 506(C) SURCHARGE**

**MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATIONS IN
SUPPORT**

Hearing Date:

Date: January 7, 2021

Time: 1:30 p.m.

Place: Courtroom 5C

411 West Fourth Street
Santa Ana, CA 92701-4593

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1 **TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE UNITED STATES TRUSTEE, THE SUBCHAPTER V TRUSTEE, AND**
3 **OTHER PARTIES-IN-INTEREST AND THEIR COUNSEL:**

4 **I. SUMMARY OF ARGUMENT**

5 Innovation Pet, Inc., the debtor and debtor-in-possession herein (“Debtor”) hereby submits
6 its Motion For Order: (1) Approving the Sale of Substantially All of the Debtor’s Assets Free and
7 Clear of Liens, Claims, and Interests Pursuant to Bankruptcy Code § 363(f); (2) Approving the
8 Assumption and Assignment of Certain Unexpired Leases and Executory Contracts; and (3)
9 Granting Related Relief Including Use of Sale Proceeds to Pay Actual Costs Incurred and Approving
10 a Bankruptcy Code § 506(c) Surcharge (“Sale Motion”). By the Sale Motion, the Debtor requests
11 entry of an order:

12 1. Authorizing the sale of substantially all assets (“Assets”) of the Debtor’s bankruptcy
13 estate (“Estate”) to RS1 Innovation Pet, Inc., or its affiliate (“RS1”) pursuant to the Asset Purchase
14 Agreement in substantially the form attached to the Declaration of Victoria Coopman (“Coopman
15 Declaration”) **Exhibit 1** (the “APA”), for a total consideration of \$500,000.00 (or as may be
16 increased by overbids) (the “Purchase Price”), or to such person or entity submitting the highest or
17 otherwise best qualified bid(s) for the Assets (“Successful Bidder(s)”) on such terms as contained
18 in an agreement agreed to by the Debtor after consultation with the Subchapter V trustee, at the
19 auction to occur at the hearing on this Sale Motion;

20 2. Authorizing, with appropriate findings, the sale of the Assets to the Successful
21 Bidder(s), free and clear of all interests, liens, charges, security interests, encumbrances or liabilities,
22 including successor liabilities pursuant to Section 363 of the Bankruptcy Code or any adverse claims
23 (hereinafter collectively referred to as “Liens and Encumbrances”), if any, pursuant to 11 U.S.C. §
24 363(f), with the Liens and Encumbrances to attach to the net sales proceeds in the preexisting extent,
25 validity and priority;

26 3. Authorizing, with appropriate findings, the Debtor to assume and assign to the
27 Successful Bidder(s), pursuant to Section 365 of the Bankruptcy Code, those unexpired leases and
28 executory contracts designated by the Successful Bidder(s) prior to the Sale Hearing on the Sale

1 Motion, which may include every contract set forth on **Exhibit 2** attached to the Coopman
2 Declaration based on the cure amounts set forth therein;

3 4. Fixing the amounts necessary to cure any and all defaults of all executory contracts
4 and unexpired leases that may be assumed by the Debtor and assigned to the Successful Bidder(s),
5 as set forth in the Cure column on **Exhibit 2**;

6 5. Authorizing the Debtor to reject its interest, if any, in all of those unexpired leases
7 and executory contracts listed on **Exhibit 2**, that are not assumed and assigned by the Successful
8 Bidder(s) effective on the date of the entry of an order granting the Sale Motion, or such later date
9 determined by the Debtor as may be provided in a notice to the non-debtor contracting party with
10 five days' notice given;

11 6. With appropriate findings of the Court regarding the adequacy of notice to creditors
12 and parties in interest relating to the Sale Motion;

13 7. With appropriate findings of the Court establishing: (i) the good faith of the Debtor
14 and the Successful Bidder(s) in connection with the negotiation, execution, delivery, and
15 consummation of the sale of the Assets; and (ii) the arms-length nature of such negotiations and
16 transactions, together with such other findings as are necessary to ensure that the Debtor and the
17 Successful Bidder(s) are each entitled to the protection afforded by 11 U.S.C. § 363(m) with respect
18 to all transactions approved in such Court order;

19 8. Authorizing the use of sale proceeds to pay actual costs incurred, including attorneys'
20 fees and costs, through a surcharge under Bankruptcy Code § 506(c);

21 9. Waiving the fourteen (14) day stay of order provided in Rules 6004(g) and 6006(d)
22 of the Federal Rules of Bankruptcy Procedure; and

23 10. Granting such other and further relief as the Court deems just and appropriate.

24 **II. BACKGROUND FACTS**

25 **A. Case Commencement**

26 On November 19, 2020 (the "Petition Date"), the Debtor commenced the instant case under
27 subchapter V of chapter 11 of the Bankruptcy Code.
28

1 On November 20, 2020, Mark Sharf (“Subchapter V Trustee”) was appointed as the
2 subchapter V trustee in the Debtor’s bankruptcy case.

3 **B. Description of the Debtor’s Business**

4 The Debtor was founded in 2012 in the state of California.

5 The Debtor is a designer and seller of innovative pet products. The Debtor’s innovative
6 products include items such as chicken coops, food and food dispensers, dietary supplements, and
7 related products.

8 In 2016, the Debtor appeared on the popular entrepreneurial reality-based TV series “Shark
9 Tank” and was endorsed and engaged by one of the “sharks.”

10 Beginning in 2016, and immediately after its appearance on Shark Tank, the Company
11 enjoyed growth and profitability. The Debtor became the largest supplier of chicken coops in the
12 U.S. retail market and expanded into consumable poultry treats. In 2017, the Debtor had
13 \$12,699,603 in revenue and \$139,000 net income.

14 Unfortunately, during the end of 2019 and the beginning of 2020, the Debtor encountered
15 some cash flow issues which put it in a position of being unable to timely pay its debts.

16 **C. Pre-Petition Marketing Efforts**

17 Prior to the Petition Date, all efforts were made to sell the Debtor’s business through brokers,
18 investment firms and directly to competitors. In approximately January 2019, the Debtor created a
19 Professional Deck including particular information about the Debtor’s business and finances and
20 sent it to potential target buyers. The Debtor could not find anyone that was interested in buying the
21 Debtor’s assets or investing in the Debtor.

22 The Debtor also sought the assistance of a business broker and an investment banking firm
23 but both passed on the opportunity. The shareholders of the Debtor, having already contributed over
24 \$500,000 in capital to the Debtor, were not willing or able to contribute additional capital given the
25 financial condition of the Debtor.

26 Given the above, by July 2020, the Debtor felt it had exhausted its options to find a buyer or
27 investor and had resigned itself to the notion that the business was not salvageable and had no choice
28 but to wind down and dissolve. The Debtor was working in that direction when the Stalking Horse

1 Bidder emerged as a potential buyer and presented an opportunity to preserve the Debtor's going
2 concern value.

3 In August 2020, the Stalking Horse Bidder submitted a letter of intent for a purchase price
4 of \$250,000 subject to completing its due diligence. The Debtor created a due diligence room and
5 after further discussion with the Debtor's secured creditors and counsel for the Debtor and the
6 Stalking Horse Bidder, the Debtor was able to negotiate an increase in the purchase price to
7 \$500,000.

8 Additional information regarding the Debtor's business and finances, as well as the
9 marketing process prior to the Petition Date, is contained in the First Day Declaration of Victoria
10 Coopman (Docket 9) and Supplemental Declaration of Victoria Coopman (Docket 19).

11 **D. Marketing of the Assets**

12 The Debtor already contacted its two main competitors, PetMate and Zoolilla, but both
13 indicated that they are not interested in purchasing the Debtor's assets. The Debtor will post the
14 sale of the Assets on the Court's website. The Debtor will also provide information on the sale to
15 twenty (20) or more other contacts that the Debtor believes might have an interest in the sale.
16 Finally, the Debtor will post information on the sale on DailyDAC, which is a company that
17 advertises the sale of distressed companies, and is contemplating advertising the sale in the LA
18 Times or other news publication. The Secured Creditors (defined below) have approved an
19 advertising budget of \$5,000. In addition to the foregoing, the Debtor's counsel (which regularly
20 represents bankruptcy trustees and distressed companies in connection with the sale of assets) has
21 posted the sale opportunity on its website and sent an email to its entire data base of clients and
22 others which is over 2,000 parties including several financial institutions, lenders, investors, private
23 equity firms and professionals.

24 At least seven (7) days prior to the hearing on this Sale Motion, the Debtor will file a
25 supplement regarding its further marketing efforts along with copies of the various emails, postings
26 and advertisements.

1 **E. The Debtor's Principal Secured Obligations**

2 Pursuant to a UCC-1 search, the Debtor has five secured creditors (collectively, the "Secured
3 Creditors") as noted below. A true and correct copy of the UCC-1 search dated October 21, 2020
4 is attached to the Coopman Declaration as **Exhibit 3**.

5 **1. Pacific Premier Bank**

6 On April 15, 2014, Plaza Bank which was later acquired by Pacific Premier Bank (the
7 "Bank"), as lender, and Victoria M. Coopman, Timothy S. Taft, Raymon A. Clubb and Antoinette
8 P. Clubb, as borrower, entered into a Promissory Note and Commercial Security Agreement in the
9 principal amount of \$150,000 which was guaranteed and secured by the assets of the Debtor.

10 On April 17, 2014, the Bank filed a UCC-1 financing statement as Document No.
11 147408153922 and on November 21, 2018, filed a Continuation of such UCC-1 financing statement
12 as Document No. 1876839231.

13 On January 27, 2015, the Bank, as lender, and Debtor, as borrower, entered into a Promissory
14 Note and Commercial Security Agreement in the principal amount of \$250,000. On January 30,
15 2015, the Bank filed a UCC-1 financing statement as Document No. 157448171149 and on August
16 6, 2019, filed a Continuation of such UCC-1 financing statement as Document No. 1977267429.

17 Pursuant to the above, the Bank has first priority valid and perfected liens in substantially
18 all assets of the Debtor.

19 **2. CapFlow Funding**

20 On December 21, 2015, CapFlow Funding Group Managers LLC ("CapFlow") and the
21 Debtor entered into a Factoring and Security Agreement pursuant to which CapFlow agreed to
22 finance certain of the Debtor's receivables. As part of such Factoring and Security Agreement,
23 CapFlow and the Debtor entered into a Purchase Order Assignment Agreement on December 21,
24 2015. CapFlow filed its UCC-1 financing statement on December 16, 2015.

25 The Debtor believes that CapFlow has been paid in full but CapFlow continues to collect the
26 Debtor's receivables and asserts it is owed at least \$1 million. Further, the Debtor believes that
27 CapFlow has failed to pay PMW as it is obligated to do under the November 2019 Intercreditor
28 Agreement as discussed below.

1 **3. Capital 2 Thrive**

2 Capital 2 Thrive (“C2T”) asserts a lien against certain of the Debtor’s assets pursuant to a
3 Purchase Order Finance Agreement between the Debtor and C2T dated October 19, 2016 and UCC-
4 1 financing statement filed on October 19, 2016 as Document No. 167551592900 and amended on
5 October 25, 2016 as Document No. 1675526303. C2T asserts it is owed approximately \$20,000.

6 **4. PMW LLC**

7 On June 17, 2019, the Debtor and PMW LLC (“PMW”) entered into a Purchase Order
8 Finance Agreement. PMW filed its UCC-1 financing statement filed on August 22, 2019 as
9 Document No. 197729283139.

10 As a result of PMW’s agreement with the Debtor, the Bank, CapFlow, and PMW entered
11 into an Amended and Restated Intercreditor Agreement dated August 21, 2019. The Bank, CapFlow
12 and PMW then entered into an Intercreditor Agreement dated November 12, 2019 (“the Intercreditor
13 Agreement”). A true and correct copy of the Intercreditor Agreement is attached to the Coopman
14 Declaration as **Exhibit 4**. Pursuant to the terms of the Intercreditor Agreement, when certain of the
15 Debtor’s purchase orders (which are financed by PMW) turn into a receivable (in other words, when
16 the goods are shipped), CapFlow must pay PMW the amount of the purchase order and then
17 CapFlow takes the receivable as a factor. In turn, the Bank agreed that its security interest in the
18 collateral of CapFlow and PMW specified in the Intercreditor Agreement would be subordinate to
19 such security interests of CapFlow and PMW.

20 **5. Internal Revenue Service**

21 Finally, the Internal Revenue Service (“IRS”) asserts a secured lien against the Debtor’s
22 assets. The Debtor believes the IRS is owed approximately \$5,000. As such, the IRS has a fifth
23 priority security interest in the Debtor’s assets.

24 **F. The Assets to Be Sold**

25 The Debtor intends to sell substantially all of the Debtor’s assets to the Stalking Horse
26 Bidder. The sale shall be of all of the Estate’s right, title, and interest in all of Debtor’s inventory,
27 furniture, fixtures, equipment, machinery, furnishings, patents, trademarks, all intangible assets and
28 all other assets necessary to and part of the Debtor’s business (“Purchased Assets”). Under the APA,

1 subject to bankruptcy court approval, the Stalking Horse Bidder will purchase the Purchased Assets
2 for a purchase price of \$500,000.00. As set forth in detail in the APA, the only remaining assets
3 that will not be sold to the Stalking Horse Bidder include very specific intellectual property rights
4 owned by a shareholder of the Debtor, avoidance actions, receivables and any claims against
5 CapFlow.¹

6 **G. Sale Procedures and Stalking Horse Protocol.**

7 On November 20, 2020, the Debtor filed a *Chapter 11 Debtor's Emergency Motion for*
8 *Order: (1) Approving Procedures in Connection with the Sale of Substantially All of the Debtor's*
9 *Assets; (2) Scheduling a Hearing on a Separate Motion to Approve the Sale of Assets; and (3)*
10 *Granting Related Relief* (Docket 8) ("Sale Procedure Motion"), whereby the Debtor sought
11 approval of the bidding procedures (set forth in Section D of the Sale Procedure Motion) ("Bidding
12 Procedures").

13 At the hearing on November 24, 2020, the Court granted the Sale Procedure Motion.

14 On December 3, 2020, the Court entered an order granting the Sale Procedure Motion
15 (Docket 35) which sets forth the Bidding Procedures that will govern the auction ("Bidding
16 Procedures Order"). A true and correct copy of the Bidding Procedures Order is attached to the
17 Coopman Declaration as **Exhibit 5**.

18 **III. RELIEF REQUESTED**

19 **A. The Proposed Sale of the Assets of the Debtor.**

20 The Debtor believes that a prompt sale of the Assets is the best and only way to maximize
21 value for the Estate and its creditors. While the Debtor will consider selling the Assets piecemeal,
22 the Debtor anticipates selling its entire business operation as a going concern because that is what
23 the parties have expressed interest in, and because it believes that the value realized from such a sale
24 will most likely be greater than would be realized from a piecemeal sale.

25
26
27
28 ¹ To the extent any statement in this Sale Motion differ from the terms of the APA, the language of
the APA shall control.

1 The Debtor will conduct the auction pursuant to the Bidding Procedures and break-up fee
2 already approved by the Court as set forth in the Bidding Procedures Order, which shall govern the
3 bidding on the Assets.

4 **B. Sale Free and Clear of Liens.**

5 The Debtor seeks authority to sell the Assets free and clear of any and all liens pursuant to
6 Bankruptcy Code §§ 363(b) and 363(f), with any Liens and Encumbrances against the Assets that
7 are not released, paid in full, or otherwise resolved through the sale, if any, to attach to the sale
8 proceeds with the same force, effect, validity, and priority as such Liens and Encumbrances had
9 with respect to the Assets prior to the sale, pending agreement with the lienholder or further Court
10 order.

11 **C. Assumption and Assignment of Unexpired Executory Contracts and Leases.**

12 Subject to exceptions not relevant here, Section 365(a) of the Bankruptcy Code provides that
13 a debtor “subject to the court’s approval, may assume or reject any executory contract or unexpired
14 lease of the debtor.” 11 U.S.C. § 365(a). The Debtor seeks authority to assume executory contracts
15 and unexpired leases identified in the APA (the “Assumed Contracts”), and assign such Assumed
16 Contracts to the Successful Bidder as part of the orderly transfer of the Assets.

17 **D. Surcharge Under Bankruptcy Code Section 506(c)**

18 Finally, the Debtor requests the Court approve a surcharge of the Secured Creditors’
19 collateral for the fees and costs expended by the Debtor and its professionals, the Subchapter V
20 Trustee, and to advertise the sale, to preserve the Assets for the benefit of the Secured Creditors
21 pursuant to Section 506(c).

22 **IV. LEGAL AUTHORITIES**

23 **A. The Proposed Sale is in the Best Interest of the Estate.**

24 The Debtor, after notice and hearing, may sell property of the estate. 11 U.S.C. § 363(b).
25 Courts ordinarily will approve a proposed sale if there is a good business reason for the sale and the
26 sale is in the best interests of the estate. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841
27 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983).

1 Here, the Debtor has made a business decision and believes that the sale of the Assets by the
2 proposed auction sale is the best available alternative for maximizing the value of the Assets for the
3 Estate and creditors. The auction sale is the most efficient and cost effective way to liquidate the
4 Assets and will allow the Estate to receive the most value for the Assets as compared to attempting
5 to sell each item on a piecemeal basis.

6 Through the competitive bidding of a public auction, it is anticipated that the Debtor will
7 receive the best and highest value for the Assets and therefore, the ultimate sale price of the Assets
8 will be fair and reasonable. In addition, the upcoming spring sale season demands a quick transition
9 of ownership in order to maintain production. The Debtor needs to sell the Assets as quickly as
10 possible in order maintain a seamless transition to the Successful Bidder. Thus, based on good
11 business reasons, approval of this Sale Motion would serve the best interests of the Estate and its
12 creditors.

13 Therefore, the Debtor respectfully submits that, if this Court applies the good business reason
14 standard suggested by the Second Circuit in *Lionel*, the sale should be approved.

15 **B. The Ultimate Purchaser Should Be Entitled to a Finding That It Is a Good Faith**
16 **Purchaser Under Section 363(m).**

17 Bankruptcy Code Section 363(m) provides:

18 The reversal or modification on appeal of an authorization under subsection (b) or
19 (c) of this section of a sale or lease of property does not affect the validity of a sale
20 or lease under such authorization to any entity that purchased or leased such property
in good faith, whether or not such entity knew of the pendency of the appeal, unless
such authorization and such sale or lease were stayed pending appeal.

21 11 U.S.C. § 363(m).

22 A good faith purchaser under Section 363(m) is one who purchases for “value” in a bidding
23 process free from fraud and collusion. In *In re Filtercorp, Inc.*, 163 F.3d 570 (9th Cir. 1998), the
24 Ninth Circuit held that an insider-purchaser was a good faith purchaser under Section 363(m):

25 [T]he bankruptcy court found that Gateway Lenders was a purchaser in good faith
26 for all purposes including 11 U.S.C. § 363(m). This finding is not clearly erroneous.
A good faith buyer “is one who buys ‘in good faith’ and ‘for value.’” *Ewell v. Diebert*
27 (*In re Ewell*), 958 F.2d 276, 281 (9th Cir.1992) (citing *In re Abbotts Dairies of*
Pennsylvania, Inc., 788 F.2d 143, 147 (3d Cir.1986)). “[L]ack of good faith is
28 [typically] shown by ‘fraud, collusion between the purchaser and other bidders or the

1 trustee, or an attempt to take grossly unfair advantage of other bidders.’ “ *Id.* (quoting
2 *Community Thrift & Loan v. Suchy (In re Suchy)*, 786 F.2d 900, 902 (9th Cir.1985)).
3 *Id.* at 577.

4 In this case, as stated in the Coopman Declaration, the Assets have been marketed to
5 numerous parties best positioned and most likely to purchase the Assets. Any sale that is realized
6 will have resulted from a competitive bidding auction, with multiple parties, including RS1, having
7 been represented by separate counsel. The Debtor is not aware and does not anticipate any “self-
8 dealing” or manipulation. The ultimate purchase price to be realized in this case will be based on a
9 competitive bidding process, and as a result, will represent an arms’ length transaction. Any sale
10 will therefore constitute a good faith purchase in accordance with 11 U.S.C. §363(m). In view of
11 the sound business reasons for the sale and the sale’s satisfaction of the procedural and substantive
12 requirements of Bankruptcy Code Section 363(b), the Debtor submits that approval should be
13 granted.

14 **C. The Proposed Sale Should be Allowed Free and Clear of Liens**

15 Bankruptcy Code § 363(f) allows a trustee, and a debtor in possession, to sell property of the
16 bankruptcy estate “free and clear of any interest in such property of an entity,” if any one of the
17 following five conditions is met:

- 18 (1) applicable non-bankruptcy law permits a sale of such
property free and clear of such interest;
- 19 (2) such entity consents;
- 20 (3) such interest is a lien and the price at which such
21 property is to be sold is greater than the aggregate value of all liens
on such property;
- 22 (4) such interest is in bona fide dispute; or
- 23 (5) such entity could be compelled, in a legal or equitable
24 proceeding, to accept money satisfaction of such interest.

25 11 U.S.C. § 363(f).

26 Section 363(f) is written in the disjunctive and thus only one of the enumerated conditions
27 needs to be satisfied for Court approval to be appropriate.

1 **1. Section 363(f)(2) – Consent**

2 The sale of the Assets is proper pursuant to Section 363(f)(2). Secured creditors, if any, will
3 have no objection to the sale under the terms set forth herein as their liens will either be paid or
4 attach to the proceeds of the sale in the same validity and priority as prior to the sale pending
5 agreement with the creditor or further Court order.

6 Further, the Debtor expects that prior to the hearing on the Sale Motion, it will have the
7 consent of all or most of the Secured Creditors to the sale free and clear of their liens.

8 Thus, approval for the sale of the Assets free and clear of Liens and Encumbrances pursuant
9 to Bankruptcy Code Section 363(f)(2) is appropriate.

10 **2. Section 363(f)(3) – Value of Assets is Greater Than the Value of the Liens**

11 The sale free and clear of liens is also proper under Section 363(f)(3). Courts have approved
12 sales under Bankruptcy Code Section 363(f) where the sale price did not exceed the value of the
13 liens asserted on the property so long as the sale is for fair market value. *In re Terrace Gardens*
14 *Park Partnership*, 96 B.R. 707 (Bankr. W.D. Tex. 1989); *In re Beker Indus. Corp.*, 63 B.R. 474,
15 477 (Bankr. S.D.N.Y. 1986). In this case, as evidenced by the Coopman Declaration, the proposed
16 purchase price is for fair market value.

17 As such, the sale free and clear of all Liens and Encumbrances is proper under Section
18 363(f)(3).

19 **3. Section 363(f)(4) – Bona Fide Dispute**

20 Finally, to the extent any of the Secured Creditors does not consent, the sale can be free and
21 clear of liens because they are subject to a bona fide dispute. Section 363(f)(4) provides that
22 property may be sold free and clear of an interest if “such interest is in bona fide dispute.” 11 U.S.C.
23 § 363(f)(4). A bona fide dispute has been defined by *In re Atwood*, 124 B.R. 402 (Bankr. S.D. Ga.
24 1991) as a “genuine issue of material fact that bears upon the debtor’s liability, or meritorious
25 contention as to the application of law to undisputed facts.” *Id.* at 407. In *In re Milford Group, Inc.*,
26 150 B.R. 904 (Bankr. M.D. Pa. 1992), the court stated it need not resolve a bona fide dispute, but
27 must determine whether the issues presented are genuine as to the existence of a bona fide dispute.
28 In doing so, the *Milford* Court found that the debtor had met its burden to establish cause for the

1 Court to allow for the sale of the property, free and clear of liens. Requiring resolution of those
2 issues before the sale of the Assets may likely take substantial time, effort and expense by the parties.

3 Here, the Debtor objects to the extent, validity and priority of the CapFlow lien. Under the
4 Intercreditor Agreement, the Debtor believes that CapFlow has been paid in full, has been
5 substantially paid down and/or inappropriately failed to pay PMW under the Intercreditor
6 Agreement. Further, CapFlow may only be secured as to certain and particular receivables of the
7 Debtor. The Debtor has requested an accounting from CapFlow but CapFlow has failed to provide
8 it to the Debtor as of this filing. On those bases, the Debtor asserts CapFlow may not have a valid
9 lien, or such lien only attaches to certain assets not subject to the sale.

10 As such, in the event CapFlow does not agree to the sale, the Debtor asserts that CapFlow's
11 lien is subject to bona fide dispute, and thus the sale may be authorized pursuant to Section 363(f)(4).

12 Based on all of the above, the sale can proceed free and clear of all Liens and Encumbrances,
13 with the Liens and Encumbrances to attach to the net sales proceeds in their preexisting extent,
14 validity and priority.

15 **D. The Debtor May Assume and Assign Certain Unexpired Lease and Executory**
16 **Contracts to the Successful Bidder**

17 Pursuant to Bankruptcy Code Section 365(a), a debtor may assume executory contracts
18 provided the debtor complies with the provisions of Bankruptcy Code Section 365(b)(1) and
19 provides adequate assurance of future performance of the executory contract. Specifically,
20 Bankruptcy Code Section 365(b)(1) provides as follows:

21 If there has been a default in an executory contract or unexpired lease
22 of the debtor, the trustee may not assume such contract or lease unless,
at the time of assumption of such contract or lease, the trustee—

23 (A) cures, or provides adequate assurance that the trustee will
24 promptly cure, such default other than a default that is a breach
25 of a provision relating to the satisfaction of any provision
26 (other than a penalty rate or penalty provision) relating to a
27 default arising from any failure to perform nonmonetary
28 obligations under an unexpired lease of real property, if it is
impossible for the trustee to cure such default by performing
nonmonetary acts at and after the time of assumption, except
that if such default arises from a failure to operate in
accordance with a nonresidential real property lease, then such
default shall be cured by performance at and after the time of

1 assumption in accordance with such lease, and pecuniary
2 losses resulting from such default shall be compensated in
accordance with the provisions of this paragraph;

3 (B) compensates, or provides adequate assurance that the
4 trustee will promptly compensate, a party other than the debtor
to such contract or lease, for any actual pecuniary loss to such
5 party resulting from such default; and

6 (C) provides adequate assurance of future performance under
such contract or lease.

7 11 U.S.C. Section 365(b)(1).

8 Bankruptcy Code section 365(f)(1) then permits a debtor to assign unexpired leases and
9 contracts free from such anti-assignment restrictions, providing, in pertinent part, that:
10

11 [N]otwithstanding a provision in an executory contract or unexpired
12 lease of the debtor, or in applicable law, that prohibits, restricts, or
conditions the assignment of such contract or lease, the trustee may
assign such contract or lease under paragraph (2) of this subsection .
13 . . .

14 11 U.S.C. § 365(f)(1).

15 Bankruptcy Code section 365(f)(1), by operation of law, invalidates provisions that prohibit,
16 restrict, or condition assignment of an executory contract or unexpired lease. *See, e.g., Coleman Oil*
17 *Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F. 3d 904, 910-11 (9th Cir. 1997)
18 (“no principle of bankruptcy or contract law precludes us from permitting the Debtor here to extend
19 its leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of
20 section 365”), cert. denied, 522 U.S. 1148 (1998). Bankruptcy Code section 365(f)(3) goes beyond
21 the scope of Bankruptcy Code section 365(f)(1) by prohibiting enforcement of any clause creating
22 a right to modify or terminate the contract or lease upon a proposed assumption or assignment
23 thereof. *See, e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (Bankruptcy Code
24 section 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because
25 it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions,
26 not merely those entitled anti-assignment clauses, are subject to court’s scrutiny regarding anti-
27 assignment effect).

1 Other courts have recognized that provisions that have the effect of restricting assignments
2 cannot be enforced. *See In re Rickel Home Ctrs., Inc.*, 240 B.R. 826, 831 (D. Del. 1998) (“In
3 interpreting Section 365(f) [sic], courts and commentators alike have construed the terms to not only
4 render unenforceable lease provisions which prohibit assignment outright, but also lease provisions
5 that are so restrictive that they constitute de facto anti-assignment provisions.”). Similarly, in *In re*
6 *Mr. Grocer., Inc.*, the court noted that:

7 [the] case law interpreting § 365(f)(1) of the Bankruptcy Code
8 establishes that the court does retain some discretion in determining
9 that lease provisions, which are not themselves ipso facto anti-
10 assignment clauses, may still be refused enforcement in a bankruptcy
context in which there is no substantial economic detriment to the
landlord shown, and in which enforcement would preclude the
bankruptcy estate from realizing the intrinsic value of its assets.

11 77 B.R. 349, 354 (Bankr. D.N.H. 1987). Thus, the Debtor requests that any anti-assignment
12 provisions be deemed not to restrict, limit, or prohibit the assumption, assignment, and sale of the
13 Assigned Contracts, and be deemed and found to be unenforceable anti-assignment provisions
14 within the meaning of Bankruptcy Code section 365(f).

15 Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory
16 contract or unexpired lease of nonresidential real property if:

17 (a) the trustee assumes such contract or lease in accordance with the
18 provisions of this section; and

19 (b) adequate assurance of future performance by the assignee of such
20 contract or lease is provided, whether or not there has been a default
in such contract or lease.

21 11 U.S.C. § 365(f)(2).

22 In reviewing a debtor’s decision to assume or reject an executory contract or an unexpired
23 lease, the Court should apply the “business judgment test” to determine whether it would be
24 beneficial to assume it. *In re Continental Country Club, Inc.*, 114 B.R. 763, 767 (Bankr. M.D. Fla.
25 1990); *see also In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996). The business judgment standard
26 requires that the Court follow the business judgment of the debtor unless that judgment is the product
27 of bad faith, whim, or caprice. *In re Prime Motors Inns*, 124 B.R. 378, 381 (Bankr. S.D. Fla. 1991).

1 A debtor satisfies the “business judgment” test when it decides, in good faith, that
2 assumption or rejection may benefit the estate and its creditors, and may preserve assets for the
3 estate. *See, In re Huang*, 23 B.R. 798, 900 (B.A.P. 9th Cir. 1982); *In re FCX, Inc.*, 60 B.R. 405,
4 441 (Bankr. E.D. N.C. 1986).

5 The trustee or debtor in possession may assume an executory contract if the value of
6 consideration still owed to the estate exceeds the cost of the remaining obligations under the
7 contract. *In re Cochise College Park, Inc.*, 703 F.2d 1339, 1355 (9th Cir. 1983). “The theory is that
8 advantageous contracts should be affirmed by the trustee, [or debtors in possession] as a means of
9 enhancing the likelihood of successful reorganization, or, if the estate is in liquidation, as a means
10 of increasing creditor dividends.” *Id.*

11 To comply with the provisions of Section 365 and cure a default under an executory contract,
12 or provide adequate insurance of a prompt cure, it is not necessary for the debtor in possession to
13 immediately cure the default, rather, the period of time in which the debtor in possession may cure
14 the arrearage under the contract may vary according to the facts and circumstances of each case. *In*
15 *re Coors of North Mississippi, Inc.*, 27 B.R. 918 (Bankr. N.D. Miss. 1983) (curing of default within
16 a three year period is a prompt cure); *In re Whitsett*, 163 B.R. 752, 755 (Bankr. E.D.Pa. 1994)
17 (allowing assumption of lease where “complete cure of the rental delinquency in slightly less than
18 two years); *In re Lawrence*, 11 B.R. 44, 45 (Bankr. N.D. Ga. 1981) (ten months to cure is held
19 prompt).

20 The meaning of “adequate assurance of future performance” depends on the facts and
21 circumstances of each case, but should be given “practical, pragmatic construction.” *See In re Art*
22 *& Architecture Books of the 21st Century*, 2013 WL 4874342 (Bankr. C.D. Cal. Sept. 12, 2013);
23 *Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989);
24 *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of
25 future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Bon*
26 *Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single
27 solution will satisfy every case, the required assurance will fall considerably short of an absolute
28 guarantee of performance.”).

1 Among other things, adequate assurance may be given by demonstrating the assignee's
2 financial health and experience in managing the type of enterprise or property assigned. *In re*
3 *Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future
4 performance is present when prospective assignee of lease has financial resources and expressed
5 willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief
6 determinant of adequate assurance is whether rent will be paid).

7 To the extent necessary, the Debtor and the Successful Bidder(s) will present evidence at the
8 Sale Hearing to prove the financial credibility, willingness, and ability of the Successful Bidder(s)
9 to perform under the Assumed Contracts. To the extent any defaults exist under any Assumed
10 Contracts, any such defaults will be cured pursuant to the Successful Bidder's asset purchase
11 agreement.

12 On this basis, the Debtor requests the Court approve the assumption and assignment of the
13 Assigned Contracts subject to the proposed cure amounts set forth in Exhibit 2 to the Coopman
14 Declaration.

15 **E. Secured Creditors' Collateral is Subject to Surcharge by the Debtor**

16 Finally, the Debtor requests the Court approve a surcharge of the proceeds of the sale for the
17 Debtor's fees and costs incurred to preserve the Secured Creditors' collateral, namely the Assets.

18 Bankruptcy Code § 506(c) provides that:

19 [t]he trustee may recover from property securing and allowed secured
20 claim the reasonable, necessary costs and expenses of preserving, or
21 disposing of, such property to the extent of any benefit to the holder
22 of such claim.

23 Surcharge of the Secured Creditors' collateral is appropriate in this case for the Debtor's
24 costs in disposing of the Assets, including the liability of the Estate incurred in connection with
25 seeking Court approval of the sale and advertising the sale to obtain the highest sales price, and the
26 pre-closing work under the APA. That work primarily benefits the Secured Creditors.
27 Consequently, the Secured Creditors' liens must be subject to several thousand dollars of recovery
28 under the surcharge powers of Bankruptcy Code § 506(c).

1 The professionals of the Estate, as well as the Subchapter V Trustee, believe that their
2 diligent efforts to preserve and dispose of the Secured Creditors' collateral clearly has benefited the
3 Secured Creditors. Moreover, the Debtor believes all of the efforts of the professionals in this case
4 were directly related to the preservation and eventual disposition of the Secured Creditors'
5 collateral. Thus, surcharging the collateral under Bankruptcy Code § 506(c) is appropriate.

6 Specifically, the Debtor's counsel has agreed to represent the Debtor in this bankruptcy case
7 for a flat fee of \$50,000 plus actual costs incurred, including the \$5,000 advertising costs noted
8 above, which will be advanced by Debtor's counsel. The Debtor's counsel's fees, if billed on an
9 hourly basis, have greatly exceeded \$50,000 as set forth in the Bastian Declaration. Given that all
10 work related to the Chapter 11 case has been required in order to effectuate the sale of the assets as
11 contemplated herein, the Debtor believes that the entirety of the fees and costs incurred by its
12 counsel should be subject to the surcharge requested herein.

13 Further, because this case has proceeded under Subchapter V, the Debtor also requests
14 surcharge in the amount of \$15,000 for fees and costs of the Subchapter V Trustee, to be held in
15 trust by the Subchapter V Trustee pending approval of a subsequent fee application.

16 The Bankruptcy Code requires only that expenditures be "reasonable, necessary costs and
17 expenses of preserving, or disposing of such property," not that the claimant have the best interests
18 of the secured creditors in mind. *See, In re Parque Forestal, Inc.*, 949 F.2d 504 (1st Cir. 1991); *In*
19 *re McKeesport Steel Castings Co.*, 799F.2d 91 (3d Cir. 1986); *In re Delta Towers, Ltd.*, 924 F.2d
20 74 (5th Cir. 1991).

21 The services performed by the Debtor's counsel and the Subchapter V Trustee are creating
22 value for the Assets for the Secured Creditors' benefit. Further, the advertising of the sale will
23 ensure the Assets are sold for the highest possible value. Where such services are performed,
24 surcharge pursuant to section 506(c) is appropriate. *See, In re Annett Ford, Inc.*, 64 B.R. 946 (D.
25 Neb. 1986) (continued operation of Chapter 11 debtor car dealership post-petition was for benefit
26 of secured creditor, therefore administrative expenses claimed for taxes, attorney's fees and wages
27 which were incurred as result of operation of business are to be paid out of proceeds of creditor's
28 collateral under section 506(c)).

1 In this Circuit, the party seeking surcharge generally must show that the incurred expenses
2 were: (1) reasonable; (2) necessary; and (3) beneficial to secured creditor. *Snohomish County v.*
3 *Seattle-First Nat'l Bank (In re Glasply Marine Industries, Inc.)*, 971 F.2d 391 (9th Cir. 1992); *In re*
4 *Cascade Hydraulics & Utility Srv., Inc.*, 815 F.2d 546 (9th Cir. 1987). In this case, the Debtor
5 requests the Court approve a surcharge in the following amounts: (1) \$50,000 for Debtor's counsel's
6 fees incurred in this case, plus actual reasonable costs incurred; (2) \$15,000 for the Subchapter V
7 Trustee's fees incurred in this case, to be held in trust by the Subchapter V Trustee pending approval
8 of a subsequent fee application to be filed by the Subchapter V Trustee; and (3) \$5,000 for
9 advertising the sale (which has been approved by the Secured Creditors).

10 Preservation of the going concern value of business can constitute benefit to a secured
11 creditor under section 506(c). *See, Annett Ford*, 64 B.R. 946 (expenses incurred during preservation
12 effort should be paid out of liquidation fund, even where effort is unsuccessful); *In re Hospitality,*
13 *Ltd.*, 86 B.R. 59 (Bankr. W.D. Pa. 1988) (preservation of going concern value of business can
14 constitute benefit to secured creditor for purposes of determining entitlement to 11 U.S.C. § 506(c)
15 administrative expenses; however, such determination is factual and must be made on case-by-case
16 basis). Surcharge pursuant to § 506(c) is appropriate where the debtor's actions relieve a secured
17 creditor of expenses such as enforcing its rights and conducting a foreclosure sale. *See, In re H.P.*
18 *Tool Mfg. Corp.*, 12 B.R. 600 (Bankr. E.D. Pa. 1981). Also, the amount of surcharge is not limited
19 only to the savings of such foreclosure costs. *See, In re Anderson*, 66 B.R. 97 (B.A.P. 9th Cir. 1986).

20 Here, the Debtor and its professionals are not only preserving the Assets for the Secured
21 Creditors, the transaction with the Buyer is the path for development of value in the Assets for the
22 Secured Creditors. If not for the services of the Debtor, its professionals, and the Subchapter V
23 Trustee, the Assets would likely have little or no value and the Secured Creditors would have to
24 enforce their liens against the Assets and would very likely not be able to realize the value from the
25 collateral that the Debtor is achieving through the sale to the Buyer as proposed herein.

26 Thus, surcharging the collateral of the Secured Creditors for the fees and expenses incurred
27 by the Debtor's counsel and the Subchapter V Trustee, as well as for advertising in an amount not
28 to exceed \$5,000, under Bankruptcy Code § 506(c) is appropriate. As such, the Debtor requests that

1 the total amount of the surcharge be paid to the Debtor's counsel and the Trustee from the sale
2 proceeds.

3 **F. The Court has Authority to Waive the Fourteen-Day Stay of Sale**

4 Federal Rule of Bankruptcy Procedure 6004(h) provides that "[a]n order authorizing the use,
5 sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry
6 of the order, unless the Court orders otherwise." Fed. Rule Bankr. P. 6004(h).

7 The Debtor believes that the exigent circumstances which require a prompt closing of the
8 sale provide cause to eliminate or shorten the time for the effectiveness of the order under Rules
9 6004(g) and 6006(d). As set forth more fully above, the circumstances of this case militate in favor
10 of allowing the transaction contemplated by the APA to close as soon as possible. Accordingly, the
11 Debtor requests that the Court order that the sale may be effectuated immediately upon entry of the
12 order.

13 **V. CONCLUSION**

14 Based upon the foregoing, the Debtor respectfully requests that the Court grant the relief
15 prayed for herein.

16 Respectfully submitted,

17 Dated: December 15, 2020

SHULMAN BASTIAN FRIEDMAN & BUI LLP

18 /s/ Melissa Davis Lowe

19 James C. Bastian, Jr.

20 Melissa Davis Lowe

21 Sarah M. St. John

22 Proposed Attorneys for Innovation Pet, Inc.
23
24
25
26
27
28

DECLARATION OF VICTORIA COOPMAN

I, Victoria Coopman, declare:

1. I am the Chief Executive Officer of Innovation Pet, Inc., a California corporation (“Debtor”) that filed a voluntary petition (the “Chapter 11 Petition”) under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on November 19, 2020.

2. I make this Declaration in support of the Debtor’s Motion For Order: (1) Approving the Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims, and Interests Pursuant to Bankruptcy Code § 363(f); (2) Approving the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts; and (3) Granting Related Relief Including Use of Sale Proceeds to Pay Actual Costs Incurred and Approving a Bankruptcy Code § 506(c) Surcharge (“Motion”). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

3. Except as otherwise indicated, all statements set forth in this Declaration are based upon: (a) my personal knowledge; (b) information supplied to me by other members of the Debtor’s management or the Debtor’s professionals that I believe in good faith to be reliable; (c) my review of relevant documents; or (d) my opinion based upon my experience and knowledge of the Debtor’s operations and financial condition. If called upon to testify, I could and would testify competently to the facts set forth in this Declaration.

4. I am also personally familiar with, and am custodian of, the records of the Debtor as they pertain to any of the Debtor’s records submitted in support of its first day motions. The records of the Debtor are made by employees or agents of the Debtor who report to me and who have a business duty to enter the records of the Debtor accurately and at or near the time of the event which they record. In general, the Debtor retains its files electronically in its computer files which are backed up regularly.

5. The Debtor was founded in 2012 in the state of California.

6. The Debtor is a designer and seller of innovative pet products. The Debtor’s innovative products include items such as chicken coops, food and food dispensers, dietary supplements, and related products.

1 7. In 2016, the Debtor appeared on the popular entrepreneurial reality-based TV series
2 “Shark Tank” and was endorsed and engaged by one of the “sharks.”

3 8. Beginning in 2016, and immediately after its appearance on Shark Tank, the
4 Company enjoyed growth and profitability. The Debtor became the largest supplier of chicken coops
5 in the U.S. retail market and expanded into consumable poultry treats. In 2017, the Debtor had
6 \$12,699,603 in revenue and \$139,000 net income.

7 9. Unfortunately, during the end of 2019 and the beginning of 2020, the Debtor
8 encountered some cash flow issues which put it in a position of being unable to timely pay its debts.

9 10. Prior to the Petition Date, all efforts were made to sell the Debtor’s business through
10 brokers, investment firms and directly to competitors. In approximately January 2019, I created a
11 Professional Deck including particular information about the Debtor’s business and finances and
12 sent it to potential target buyers. The Debtor could not find anyone that was interested in buying the
13 Debtor’s assets or investing in the Debtor.

14 11. The Debtor also sought the assistance of a business broker and an investment banking
15 firm but both passed on the opportunity. The shareholders of the Debtor, having already contributed
16 over \$500,000 in capital to the Debtor, were not willing or able to contribute additional capital given
17 the financial condition of the Debtor.

18 12. Given the above, by July 2020, the Debtor felt it had exhausted its options to find a
19 buyer or investor and had resigned itself to the notion that the business was not salvageable and had
20 no choice but to wind down and dissolve. The Debtor was working in that direction when the
21 Stalking Horse Bidder emerged as a potential buyer and presented an opportunity to preserve the
22 Debtor’s going concern value.

23 13. In August 2020, the Stalking Horse Bidder submitted a letter of intent for a purchase
24 price of \$250,000 subject to completing its due diligence. The Debtor created a due diligence room
25 and after further discussion with the Debtor’s secured creditors and counsel for the Debtor and the
26 Stalking Horse Bidder, the Debtor was able to negotiate an increase in the purchase price to
27 \$500,000. A true and correct copy of the proposed APA with RS1 is attached hereto as **Exhibit 1**
28 and the list of Assumed Contracts under the APA is attached hereto as **Exhibit 2.**

1 14. The Debtor already contacted its two main competitors, PetMate and Zoolilla, but
2 both indicated that they are not interested in purchasing the Debtor's assets. The Debtor will post
3 the sale of the Assets on the Court's website. The Debtor will also provide information on the sale
4 to twenty (20) or more other contacts that the Debtor believes might have an interest in the sale.
5 Finally, the Debtor will post information on the sale on DailyDAC, which is a company that
6 advertises the sale of distressed companies, and is contemplating advertising the sale in the LA
7 Times or other news publication. The Secured Creditors have approved an advertising budget of
8 \$5,000.

9 15. At least seven (7) days prior to the hearing on this Sale Motion, the Debtor will file
10 a supplement regarding its further marketing efforts along with copies of the various emails, postings
11 and advertisements.

12 16. The Debtor's Secured Creditors are described in the Sale Motion and in my First Day
13 Declaration. A true and correct copy of the UCC-1 search dated October 21, 2020 is attached hereto
14 as **Exhibit 3**.

15 17. On November 20, 2020, the Debtor filed the Sale Procedure Motion, whereby the
16 Debtor sought approval of the bidding procedures (set forth in Section D of the Sale Procedure
17 Motion).

18 18. At the hearing on November 24, 2020, the Court granted the Sale Procedure Motion.

19 19. On December 3, 2020, the Court entered an order granting the Sale Procedure Motion
20 (Docket 35) which sets forth the Bidding Procedures that will govern the auction ("Bidding
21 Procedures Order"). A true and correct copy of the Bidding Procedures Order is attached hereto as
22 **Exhibit 5**.

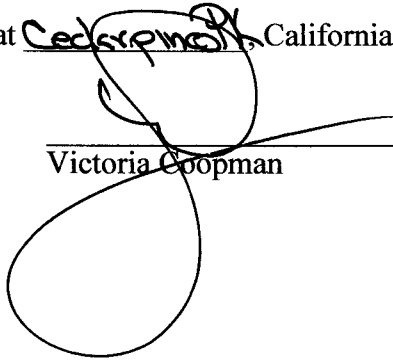
23 20. The Debtor objects to the extent, validity and priority of the CapFlow lien. Under
24 the Intercreditor Agreement, the Debtor believes that CapFlow has been paid in full, has been
25 substantially paid down and/or inappropriately failed to pay PMW under the Intercreditor
26 Agreement. Further, CapFlow may only be secured as to certain and particular receivables of the
27 Debtor. A true and correct copy of the Intercreditor Agreement is attached hereto as **Exhibit 4**. The
28 Debtor has requested an accounting from CapFlow but CapFlow has failed to provide it to the

1 Debtor as of the time of filing the Motion. On those bases, the Debtor asserts CapFlow may not
2 have a valid lien, or such lien only attaches to certain assets not subject to the sale.

3 21. The Debtor also seeks Court approval of a Bankruptcy Code § 506(c) surcharge
4 against the Secured Creditors' liens for the costs the Estate has incurred in the maintenance of the
5 Secured Creditors' collateral as well as with the preservation and disposition of such collateral.
6 Given that all work related to the Chapter 11 case has been required in order to effectuate the sale
7 of the assets as contemplated herein, the Debtor believes that the entirety of the fees and costs
8 incurred by its counsel should be subject to the surcharge requested in the Motion.

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct.

11 Executed on December 15, 2020 at Cedars of Lebanon California.

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DECLARATION OF JAMES C. BASTIAN, JR.

I, James C. Bastian, Jr., declare:

1. I am an attorney duly admitted to practice before this Court. I am an attorney with Shulman Bastian Friedman & Bui LLP (the “Firm”), attorneys of record for Innovation Pet, Inc., a California corporation, the debtor and debtor in possession herein (“Debtor”). I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto.

2. I make this Declaration in support of the Debtor’s Motion For Order: (1) Approving the Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims, and Interests Pursuant to Bankruptcy Code § 363(f); (2) Approving the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts; and (3) Granting Related Relief Including Use of Sale Proceeds to Pay Actual Costs Incurred and Approving a Bankruptcy Code § 506(c) Surcharge (“Motion”). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

3. As part of the Motion, the Debtor requests a surcharge under Section 506(c) of the fees incurred by the Firm in connection with seeking Court approval of the sale and advertising the sale to obtain the highest sales price and the pre-closing work under the APA.

4. In particular, the Debtor requests a surcharge in the amount of \$50,000, plus actual reasonable costs incurred which shall be paid to the Firm from the proceeds of the sale before payment to other creditors. Debtor’s counsel has agreed to represent the Debtor in this bankruptcy case for a flat fee of \$50,000 plus actual costs incurred, including the \$5,000 advertising costs noted above, which have been advanced by Debtor’s counsel.

5. All of the Firm’s efforts in this case were directly related to the preservation and eventual disposition of the Secured Creditors’ collateral. The sale transaction with the Buyer is the path for development of value in the Assets for the Secured Creditors. If not for the services of the Firm and others, the Assets would likely have little or no value and the Secured Creditors would have to enforce their liens against the Assets and would very likely not be able to realize the value

1 from the collateral that the Debtor is achieving through the sale to the Buyer, with the assistance of
2 the Firm.

3 6. The Firm has in fact, already incurred in excess of \$95,000 in fees and costs (if billed
4 at our normal hourly rates) relating to its representation of the Debtor in this case and to the extent
5 necessary, the Firm can provide all back up and invoices to evidence the fees it has incurred in this
6 case.

7 7. As part of the marketing of the sale, the Firm will post the sale opportunity on its
8 website and will send an email to its entire data base of clients and others which is over 2,000 parties
9 including several financial institutions, lenders, investors, private equity firms and professionals.

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct.

12 Executed on December 15, 2020 at Irvine, California.

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14 _____
15 James C. Bastian, Jr.
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EXHIBIT 1

EXECUTION

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of November 20, 2020 (the “Effective Date”) by and between RS1Innovation, Inc., a Delaware corporation (“Purchaser”), and Innovation Pet, Inc., a California corporation (“Seller”). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in Section 12.14 of this Agreement.

RECITALS

WHEREAS, Seller is a seller engaged in the design, manufacture, and sale of animal and pet care goods and products (such businesses, as presently conducted by Seller, shall be collectively referred to herein as the “Business”);

WHEREAS, on November 19, 2020 (the “Petition Date”), Seller filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court” and the case arising under such petition, the “Bankruptcy Case”);

WHEREAS, on the Petition Date, Seller filed a Motion for (I) an Order Establishing Bidding Procedures and Granting Related Relief and (II) an Order or Orders Approving the Sale of the Debtors’ Assets pursuant to which Seller sought, and the Bankruptcy Court approved, the Bidding Procedures Order attached hereto as Exhibit 1 (the “Bidding Procedures Order”).

WHEREAS, Seller wishes to sell, transfer, convey, assign and deliver to Purchaser the Purchased Assets (defined below), together with the Assumed Liabilities of Seller (defined below) upon the terms and subject to the conditions set forth in this Agreement (hereinafter collectively referred to as the “Transaction”);

WHEREAS, Purchaser wishes to purchase and take delivery of such Purchased Assets and Assumed Liabilities upon such terms and subject to such conditions as are set forth herein;

WHEREAS, the Purchased Assets and Assumed Liabilities are assets and liabilities of Seller, which are to be purchased and assumed by Purchaser pursuant to an order of the Bankruptcy Court approving such sale pursuant to Sections 105, 363 and 365 of the Bankruptcy Code (the “Sale Order”), which order will include the authorization for the assumption by Seller and assignment to Purchaser of certain executory contracts and unexpired leases and liabilities thereunder under Section 365 of the Bankruptcy Code, all in the manner and subject to the terms and conditions set forth in this Agreement and the Sale Order and in accordance with the applicable provisions of the Bankruptcy Code, and the consummation of the transactions set forth in this Agreement is subject, among other things, to the entry of the Sale Order.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

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**ARTICLE I
PURCHASE AND SALE**

Except as otherwise provided and subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, convey, assign, transfer and deliver to Purchaser, and Purchaser agrees to purchase from Seller at the Closing, all of Seller's right, title and interest in and to the Purchased Assets, free and clear of all Liens, claims or interests of any type or nature, whether known or unknown, of Seller or any other party, except for the Assumed Liabilities, in exchange for the Purchase Price.

**ARTICLE II
DESCRIPTION OF PURCHASED ASSETS; EXCLUDED ASSETS; ASSUMPTION OF
LIABILITIES**

Section 2.1 Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser free and clear of any Liens, and Purchaser shall purchase, acquire and take assignment and delivery from Seller, all of Seller's right and title to and interest in and to the assets, properties, and rights (contractual or otherwise) owned by Seller, excluding the Excluded Assets (defined below), set forth below (the assets so included, the "Purchased Assets"). The Purchased Assets shall include, without limitation, all of Seller's right, title and interest in and to the following which are necessary to operate Seller's business:

(a) all equipment, machinery, inventory, tanks, tooling, molds, furniture, equipment, fixtures, or other tangible personal property, and any warranty rights or claims associated therewith;

(b) all leases of equipment, machinery, or other tangible personal property, including those listed on Schedule 2.1(b) hereto (the "Personal Property Leases");

(c) all contracts, independent contractor agreements, contract rights, license agreements, customer contracts, purchase and sales orders (if any), instruments, royalty agreements, third party guaranties, indemnifications, arrangements and understandings, whether oral or written, to which Seller is a party and which relate to the Purchased Assets and the operation of the Business, only to the extent listed on Schedule 2.1(c) hereto (the "Assumed Contracts");

(d) all leases of real property, to the extent listed on Schedule 2.1(d) hereto (the "Real Property Leases");

(e) all Permits transferable to Purchaser pursuant to their terms and in accordance with applicable Laws;

(f) all intellectual property owned by Seller, including but not limited to all domestic and foreign patents, patent applications (regardless of the applicant), trademarks, service marks and other indicia of origin, trademark and service mark registrations and applications for registrations thereof, copyrights, copyrights to Seller's website(s) pages, website page layouts, and graphics used for Seller's websites, databases generated for Seller's websites, source codes (if any) for Seller's websites, copyright registrations and applications for registration thereof, Internet

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domain names and universal resource locators (URLs), phone numbers, trade secrets, inventions (whether or not patentable), invention disclosures, moral and economic rights of authors and inventors (however denominated), technical data, customer lists, vendor lists, corporate and business names, trade names, trade dress, brand names, know-how, show-how, formulae, methods (whether or not patentable), designs, processes, procedures, technology, source codes, object codes, computer software programs, databases, data collectors and other proprietary information or material of any type, whether written or unwritten (and all goodwill associated with, and all derivatives, improvements and refinements of, any of the foregoing) (collectively the “Intellectual Property”) including without limitation the registered intellectual property listed on Schedule 2.1(f) hereto;

(g) all credits, prepaid expenses, deferred charges, advance payments, security deposits and deposits owned, used or held for use by Seller with respect to the Business and any customer pre-paid amounts for services to be rendered by Purchaser after the Closing;

(h) all books and records related to the Purchased Assets or the Business, including customer or client lists, files, documentation, records and the related documentation;

(i) all claims, indemnities, warranties, guarantees, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent) related to the Purchased Assets or the Business (other than those related to the Excluded Assets or the Excluded Liabilities, or claims on insurance policies of Seller);

(j) all deposits and prepayments held by third parties pursuant to any Assumed Contract;

(k) to the extent not listed above, except as explicitly included in Excluded Assets, including:

(i) equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, and all of Seller's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records; and

(ii) to the extent not listed above, all other personal property of Seller.

Section 2.2 Excluded Assets. The Purchased Assets shall not include the assets, properties and/or rights of Seller set forth in this Section 2.2 (collectively, the “Excluded Assets”):

(a) the Purchase Price;

(b) any Permits that are not transferable pursuant to their terms and in accordance with applicable Laws;

EXECUTION

(c) the Contracts listed on Schedule 2.2(c) hereto (the “Excluded Contracts”);

(d) any of the following books and records: corporate seals, organizational documents, minute books, stock books, tax returns, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee benefit-related files or records (other than personnel files of Transferred Employees), and any other books and records which Seller is prohibited from disclosing or transferring to Purchaser under applicable Law and is required by applicable Law to retain;

(e) any asset, including any Contract, set forth in Schedule 2.2(e) attached hereto;

(f) all of Seller’s Tax refunds, rebates, credits, Tax assets and similar items relating to any period, or any portion of any period;

(g) income Tax Returns of Seller and related materials;

(h) equity securities or other ownership interests of Seller; and

(i) all accounts, chattel paper, accounts receivables (including tangible and electronic chattel paper), documents (including negotiable documents), and money.

Section 2.3 Assumed Liabilities; Excluded Liabilities.

(a) At the Closing, Purchaser shall assume and agree to perform and discharge only the following Liabilities to the extent not previously performed or discharged, and no others: (i) all Liabilities which first accrue and are to be performed from and after the Closing under the Assumed Contracts, the Personal Property Leases and the Real Property Leases, which relate to periods of time on or after the Closing Date, (ii) liabilities and obligations relating to and arising from Purchaser’s operation of a business using the Purchased Assets after the Closing Date; and (iii) the Liabilities listed on Schedule 2.3(a) hereto (items (i)-(iii) are collectively referred to herein as the “Assumed Liabilities”).

(b) Other than the Assumed Liabilities, Purchaser shall not assume or be bound by or be obligated or responsible for any duties, responsibilities, commitments, expenses, obligations or liabilities of Seller or relating to the Purchased Assets (or which may be asserted against or imposed upon Purchaser as a successor or transferee of Seller as an acquirer of the Purchased Assets as a matter of law) of any kind or nature, fixed or contingent, known or unknown, including, without limitation, the following (collectively, the “Excluded Liabilities”):

(i) any Liability of Seller in respect of any Taxes;

(ii) any Liability of Seller related to any Excluded Asset, including under any Contract or lease that is not an Assumed Contract or Assumed Personal Property Lease;

(iii) any Liability of Seller which first accrued and was to be performed prior to the Closing under the Assumed Contracts, the Personal Property Leases or the Real Property Leases or which otherwise relate to periods of time prior to the Closing Date;

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(iv) any Liability of Seller relating to and arising from Seller's operation of the Business using the Purchased Assets prior to the Closing;

(v) any Liability of Seller arising out of or resulting from its compliance or noncompliance with any Law, including without limitation any Claims by any state or federal agency relating to misclassification of Seller's workers under the Fair Labor Standards Act of 1938 (FLSA) or any similar state law;

(vi) any Liabilities of Seller or any of its Affiliates with respect to any present or former employees, officers, directors, retirees, independent contractors, attorneys, professionals, consultants or other agents of Seller or any of its Affiliates, including any Liabilities associated with any Claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, termination or other payments or Claims;

(vii) the loan pursuant to the Paycheck Protection Program administered by the Small Business Administration, as embodied by that certain Promissory Note by and between Pacific Premier Bank, National Association and Seller, dated April 18, 2020;

(viii) any accounts payable or other obligations of Seller or any of its Affiliates that are not identified on Schedule 2.3(a) or expressly included as Assumed Liabilities by Section 2.3(a);

(ix) any Liability of Seller arising out of or related to any Legal Proceeding against it or any Legal Proceeding which could reasonably be expected to have an adverse effect on the Purchased Assets and which was or could have been asserted on or prior to the Closing Date and to the extent the basis of which arose or accrued on or prior to the Closing Date;

(x) any Liabilities of Seller arising under or in connection with any Employee Plans of, or maintained or required to be maintained by, Seller;

(xi) any Liability of Seller to pay any fees or commissions to any broker or finder in connection with the transactions contemplated by this Agreement; and

(xii) any Liability of Seller that is not an Assumed Liability.

Section 2.4 Real Property Leases and Assumed Contracts.

(a) At such time as is specified in the Sale Order, pursuant to Section 365 of the Bankruptcy Code, Seller shall assume and assign to Purchaser and Purchaser shall assume from Seller, the Real Property Leases and the Assumed Contracts. The amounts necessary, pursuant to Section 365 of the Bankruptcy Code, to cure any and all defaults and to pay all actual or pecuniary losses that have resulted from any such defaults under any Real Property Leases or Assumed Contract (such aggregate amount, the "Cure Amount") shall be paid by Purchaser, in each case as and when finally determined by the Bankruptcy Court pursuant to the procedures set forth in the Sale Order and this Agreement.

(b) Seller shall timely serve the motion seeking entry of the Sale Order to all parties to leases and contracts and, subject to Section 2.5 and the performance of Purchaser's obligations in

EXECUTION

Article III, Seller shall use commercially reasonable efforts to cause the Real Property Leases and Assumed Contracts to be assumed by Purchaser and assigned to Purchaser pursuant to Section 365 of the Bankruptcy Code, and Seller shall comply with all requirements under Section 365 of the Bankruptcy Code necessary to assign and delegate to Purchaser all of Seller's rights and obligations under the Real Property Leases and Assumed Contracts.

(c) Notwithstanding any provision in this Agreement to the contrary, if for any reason Purchaser fails to pay the Cure Amount in respect of any Assumed Contract or Real Property Leases when due and payable pursuant to this Agreement, the Sale Order or any other Order of the Bankruptcy Court, (i) Seller shall be under no obligation whatsoever to pay or otherwise satisfy such Cure Amount or any other liability or obligation under such Assumed Contract or Real Property Leases, (ii) Purchaser shall indemnify and hold harmless Seller in respect of such Cure Amount, liability or obligation as well as any expenses (including legal fees and expenses) incurred by Seller in defending any claim for payment of the Cure Amount or any other liability or obligation arising under such contract or lease asserted by the counterparty thereto and (iii) Seller may reject, and nothing in this Agreement shall prohibit Seller from rejecting, such contract or lease.

(d) Notwithstanding any provision in this Agreement to the contrary, at any time prior to the Sale Hearing, Purchaser may designate in writing to Seller any contract or lease as an Excluded Liability, only if the rejection of such contract or lease would not give rise to a Claim in favor of the counterparty thereto having administrative priority or any other priority senior to a general unsecured Claim against the bankruptcy estate of Seller (a "Qualifying Excluded Contract and Lease"). Seller may reject, and nothing in this Agreement shall prohibit Seller from rejecting, a Qualifying Excluded Contract and Lease.

Section 2.5 Non-Assignment of Purchased Assets. Notwithstanding any provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not affect the assignment or transfer of any Purchased Asset if (a) an attempted assignment thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any party thereto other than Seller (each such action, a "Required Consent"), would constitute a breach thereof (after giving effect to any waiver by the applicable counterparty, or any elimination of such approval, authorization or consent requirement by operation of the Sale Order) or in any way adversely affect the rights or obligations of Purchaser thereunder and such Required Consent is not obtained and (b) the Bankruptcy Court shall not have entered an Order providing that such Required Consent is not required because the transfer thereof shall be deemed by the Bankruptcy Court to be (x) effective and (y) not a breach thereof, notwithstanding the failure to obtain such Required Consent. In such event, Seller and Purchaser will use their commercially reasonable efforts to obtain the Required Consents with respect to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Purchaser as Purchaser may reasonably request; provided, however, that Seller shall not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested (other than the applicable Cure Amount) or to initiate any litigation or legal proceedings to obtain any such consent or approval. If such Required Consent is not obtained, or if such Purchased Asset or an attempted assignment thereof would otherwise be ineffective or would adversely affect the rights of Seller thereunder so that Purchaser would not in fact receive all such rights, Seller and Purchaser will cooperate in a mutually agreeable arrangement, to the

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extent feasible and at no out-of-pocket expense to Seller or Purchaser, under which Purchaser would obtain the benefits and assume the obligations (to the extent otherwise constituting Assumed Liabilities hereunder) thereunder in accordance with this Agreement, including subcontracting, sublicensing or subleasing to Purchaser, or under which Seller would enforce for the benefit of, and at the direction of, Purchaser, with Purchaser assuming Seller's obligations (to the extent otherwise constituting Assumed Liabilities hereunder), any and all rights of Seller thereunder.

ARTICLE III INSTRUMENTS OF TRANSFER AND ASSUMPTION

Section 3.1 Transfer Documents. At the Closing, Seller will deliver to Purchaser (a) one or more Bills of Sale in substantially the form attached hereto as Exhibit A (the "Bill of Sale"), and (b) all such other good and sufficient instruments of sale, transfer and conveyance consistent with the terms and provisions of this Agreement, including, without limitation, the Purchased Assets, and any other assignments as shall be reasonably necessary to vest in Purchaser all of Seller's right and title to, and interest in, the Purchased Assets.

Section 3.2 Assignment and Assumption Documents. At the Closing, Purchaser and Seller will execute and deliver an Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit B (the "Assumption Agreement") in order to effect the assignment and assumption of the Assumed Liabilities.

ARTICLE IV PURCHASE PRICE

Section 4.1 Purchase Price. The aggregate consideration for the sale and transfer to Purchaser of the Purchased Assets (the "Purchase Price") shall be:

(a) Five Hundred Thousand U.S. Dollars cash (\$500,000) (the "Gross Closing Cash Payment"), to be adjusted pursuant to 4.2(b), payable upon Closing by wire transfer to an account designated by Seller; and

(b) assumption of the Assumed Liabilities.

Section 4.2 Good Faith Deposit.

(a) Upon execution of this Agreement, Purchaser will pay to Seller the amount of Fifty Thousand Dollars (\$50,000.00) by wire transfer of immediately-available funds (the "Good Faith Deposit") to be held in escrow by Seller's counsel, Shulman Bastian Friedman & Bui LLP. The Good Faith Deposit shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of either of Seller or Purchaser and shall be deposited in a segregated deposit account of Seller and held in trust to be administered solely in accordance with the terms of this Agreement and the Bidding Procedures Order. Upon the Closing, the Good Faith Deposit shall be an Excluded Asset and shall not be subject to any restrictions under this Agreement.

(b) If the Closing occurs, the Gross Closing Cash Payment shall be reduced by the amount of the Good Faith Deposit (such resulting amount, the "Net Closing Cash Payment"), to be paid and delivered in accordance with Section 10.7.

EXECUTION

(c) If this Agreement is terminated pursuant to Article XI, the Good Faith Deposit shall be repaid to Purchaser or retained by Seller in the amounts and at the times set forth in Article XI.

ARTICLE V CLOSING, BANKRUPTCY MATTERS

Section 5.1 Closing Date. Subject to the terms and conditions hereof and satisfaction of all conditions to Closing set forth in Articles IX and X hereof, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place electronically via the exchange of executed documents and other deliverables by PDF simultaneously with the execution of this Agreement or at such other time or place as may be mutually agreed upon between the parties, which date shall not be earlier than the first day following the entry of the Sale Order by the Bankruptcy Court (the day on which the Closing takes place being the "Closing Date"). The Closing shall be effective as of 12:01 a.m. Pacific Time on the Closing Date (the "Effective Time") and all actions scheduled in this Agreement for the Closing Date shall be deemed to occur simultaneously at the Effective Time.

Section 5.2 Bankruptcy Matters.

(a) Backup Bidder. In the event that Purchaser is designated as the "Backup Bidder" in accordance with and as defined in the Bidding Procedures Order, Purchaser agrees that it will keep the Backup Bid (as defined in the Bidding Procedures Order) open and irrevocable until the earlier of 5:00 p.m. (Pacific Standard Time) on the date that is sixty (60) days after the date of entry of the Bankruptcy Court's Order approving the Alternative Transaction and the closing date of the Alternative Transaction. Notwithstanding anything to the contrary in this Agreement, Seller may also identify and enter into agreements respecting (x) a "back-up" bid relating to an Alternative Transaction, and/or (y) a liquidation sale of all or a portion of the Inventory and the other assets of Seller, in either case to become effective in the event Purchaser does not perform in accordance with the terms of this Agreement.

(b) Notice to Holders of Liens, Claims and Interests. Seller has provided notice of the intent to seek entry of the Sale Order to all holders of Liens, Claims and Interests in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules for the Bankruptcy Court and any other applicable Order of the Bankruptcy Court.

(c) Entry of Sale Order. Seller has filed with the Bankruptcy Court one or more motions which, collectively, seek the entry of the Sale Order. The Sale Order provides that, without limitation and notwithstanding anything to the contrary in this Agreement (including any Assumed Contract), Purchaser is not liable for, and is taking the Purchased Assets free of, any Excluded Liabilities. Seller and Purchaser shall use reasonable best efforts to cooperate, assist and consult with each other to secure the entry of the Sale Order, and to consummate the transactions contemplated by this Agreement, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement. In the event that any Orders of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such Order), Seller and

EXECUTION

Purchaser will cooperate in determining and pursuing the response to any such appeal, petition or motion and Seller and Purchaser shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion. For purposes of this Section 5.2(c) only, commercially reasonable efforts shall without limitation require each party to this Agreement to pay its costs and expenses reasonably required in connection with preparing and seeking entry of the Sale Order by the Bankruptcy Court and resolution of any appeal therefrom.

ARTICLE VI SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Purchaser that the statements contained in this Article VI are true and correct as of the Closing Date, subject to the disclosures and exceptions set forth in the Disclosure Schedules attached hereto:

Section 6.1 Organization, Qualification and Corporate Power. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of California and is in good standing under the Laws of each jurisdiction where such qualification is required, except where the lack of such qualification would not reasonably be expected to have a Material Adverse Effect. Seller has all necessary power and authority to own and operate its properties and to carry on its business as it is now being conducted. Seller has the power and authority to execute and deliver and, subject to the Bankruptcy Court's entry of the Sale Order, perform its obligations under this Agreement and the other Transaction Documents, and to undertake the transactions contemplated hereby and thereby. As used herein, the term "Transaction Documents" means this Agreement and all other agreements, documents and instruments, subject to the Bankruptcy Court's entry of the Sale Order, executed in connection herewith or required to be executed, subject to the Bankruptcy Court's entry of the Sale Order, and/or delivered by Seller in accordance with the provisions of this Agreement.

Section 6.2 Authorization, Execution and Delivery of Agreement and Transaction Documents. Subject to the Bankruptcy Court's entry of the Sale Order, the execution, delivery and performance of this Agreement and the other Transaction Documents by Seller and the transfer or assignment of the Purchased Assets to Purchaser have been duly and validly authorized and approved by all necessary corporate action. Seller will have full power, right and authority to sell and convey to Purchaser the Purchased Assets owned by Seller, subject to any necessary consent and waiver from Seller's creditors.

Section 6.3 Title to Purchased Assets and Ownership. Except as would not have a Material Adverse Effect, Seller has good title to, or right by license, lease or other agreement to use, the Purchased Assets. Subject to the entry of the Sale Order, at the Closing, Seller will have the right to transfer the Purchased Assets to Purchaser free and clear of all Liens, other than Liens included in the Assumed Liabilities and Permitted Liens, and the Intellectual Property is exclusively owned by Seller and no other party has a license to use any Intellectual Property.

Section 6.4 Legal Proceedings. Except as set forth on Schedule 6.4 hereto, there is no Legal Proceeding pending or, to the Knowledge of Seller, threatened in writing against or affecting Seller or the Purchased Assets (or to the Knowledge of Seller, pending or threatened, against any of the officers, directors or employees of Seller with respect to their business activities related to or

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affecting the Purchased Assets) (a) that challenges or that is reasonably expected to have the effect of preventing, making illegal, delaying or otherwise interfering with any of the transactions contemplated by this Agreement; or (b) that is related to the Purchased Assets to which Seller is otherwise a party. Specifically, there is no currently pending claim for product liability, warranty, material back-charge, material additional work, field repair or other claims by any third party (whether based on contract or tort and whether relating to personal injury, including death, property damage or economic loss) arising from: (a) services rendered by Seller in connection with its Business during periods through and including the Closing Date, (b) the sale, distribution, erection or installation of products by Seller prior to the Closing Date, or the manufacture of products by Seller, or (c) the operation of the Business or the ownership of the Purchased Assets during the period through and including the Closing Date. All services rendered and products sold by Seller have been in material conformity with all applicable contractual commitments and all express and implied warranties, and Seller has no liability (and Seller has no knowledge of any basis for any Legal Proceeding) for damages in connection therewith. No services or products provided by Seller are subject to any guaranty, warranty, or other indemnity beyond Seller's standard terms and conditions of sale.

Section 6.5 Real Property. Seller does not own any real property. Schedule 6.5 sets forth the street addresses of all real property used or held for use in the Business which Seller leases, operates, occupies, or subleases in connection with the Business or upon which any tangible Purchased Assets are located and all instruments, easements, leases, subleases, options and other material agreements (including all amendments thereto) creating any interest or right in Seller or any other party in any of the real property specifying the name of the lessor or sublessor (as applicable).

Section 6.6 Compliance with Laws. Except as set forth on Schedule 6.6 or would not otherwise reasonably be expected to cause a Material Adverse Effect, (i) Seller has operated the Business in material compliance with all applicable Laws, and (ii) except as may result from the Bankruptcy Case, Seller has not received written notice of any violation of any applicable Laws, nor is Seller in default with respect to any Order applicable to the Purchased Assets.

Section 6.7 Consents and Approvals. The execution, delivery and performance of this Agreement and the Transaction Documents to which Seller is a party do not and will not require the consent or approval of, or filing with, any Governmental Authority or any other Person, other than (i) as may be required to be obtained by Seller after the Closing in order for Purchaser to own or operate any of the Purchased Assets; (ii) the entry of the Sale Order by the Bankruptcy Court; or (iii) for such consents, approvals and filings, of which the failure to obtain or make would not, individually or in the aggregate, have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement or by the Transaction Documents to which Purchaser is a party.

Section 6.8 Labor Matters. Except as set forth on Schedule 6.8 hereto, there are no employment, consulting, severance or indemnification contracts between Seller and any of its employees. Seller (i) is not party to or bound by any collective bargaining or similar agreement with any labor organization; (ii) has no employees that are represented by any labor organization; and (iii) has no Knowledge of any union organizing activities among the employees of Seller.

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Section 6.9 Permits. Seller is and at all times has been in compliance in all respects with all Permits applicable to it, or applicable to the conduct and operations of the Business, or relating to or affecting the Purchased Assets, except for such failures to comply that would not, individually or in the aggregate, have or be reasonably expected to have a Material Adverse Effect. Seller has not received any written notice from any Governmental Authority specifically alleging (i) any actual, alleged, possible or potential material violation of, or failure to comply with, any such Permits or (ii) any actual, alleged, possible or potential revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Permit.

Section 6.10 Insurance. Seller is not in material default under any of its insurance policies or binders, and Seller has not failed to give any notice or to present any claim under any such policy or binder in a due and timely fashion.

ARTICLE VII PURCHASER'S REPRESENTATIONS

Purchaser represents and warrants to Seller that the statements contained in this Article VII are true, correct and complete as of the Closing Date.

Section 7.1 Organization; Qualification and Corporate Power. Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Purchaser has all necessary power and authority to (a) own and operate its properties, carry on its business as it is now being conducted, (b) subject to the Bankruptcy Court's entry of the Sale Order, perform its obligations under this Agreement and the other Transaction Documents, and to undertake and carry out the transactions contemplated hereby and thereby, and (c) own and operate the Purchased Assets and Business.

Section 7.2 Authorization, Execution and Delivery of Agreement and Transaction Documents. Subject to the Bankruptcy Court's entry of the Sale Order, all necessary consents and approvals have been obtained by Purchaser for the execution and delivery of this Agreement and the Transaction Documents. Subject to the Bankruptcy Court's entry of the Sale Order, the execution, delivery and performance of this Agreement and the other Transaction Documents in accordance with their terms by Purchaser have been duly and validly authorized and approved by all necessary corporate action. Subject to the Bankruptcy Court's entry of the Sale Order, Purchaser has full power, right and authority to acquire the Purchased Assets. This Agreement is, and each of the other Transaction Documents when so executed and delivered will be, a valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, subject to the Bankruptcy Court's entry of the Sale Order.

Section 7.3 Brokers. Purchaser has not engaged any agent, broker or other Person acting pursuant to the express or implied authority of Purchaser which is or may be entitled to a commission or broker or finder's fee in connection with the transactions contemplated by this Agreement or otherwise with respect to the sale of the Purchased Assets.

Section 7.4 No Violation of Laws or Agreements. The performance by Purchaser of its obligations contemplated hereunder and the consummation by Purchaser of the transactions contemplated herein will not violate, (a) any Laws or any judgment, decree, order, regulation or

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rule of any court or Governmental Authority to which Purchaser is subject; or (b) contravene, conflict with or result in a violation of any provision of any organizational documents of Purchaser.

Section 7.5 No Other Representations. Except for the express representations and warranties contained in this Agreement, neither Purchaser, nor any other person, makes or shall be deemed to make any representation, warranty or statement of any kind or nature to Seller regarding this transaction. Seller shall only be entitled to rely on the representations, warranties or statements that are expressly set forth herein and such parties will not have any right or remedy arising out of any other alleged representation, warranty or statement.

Section 7.6 Adequate Assurances Regarding Assumed Contracts and Real Property Leases. Purchaser is and will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts and Real Property Leases.

Section 7.7 Financial Capability. Purchaser currently has or at Closing will have available funds necessary to consummate the transactions contemplated by this Agreement, including the acquisition of the Purchased Assets and assumption of the Assumed Liabilities, and the payment therefor (i) to Seller of the Purchase Price and (ii) of any Cure Amount, and to perform its obligations under this Agreement and the Transaction Documents to which Purchaser is a party on the terms and subject to the conditions contemplated hereby and thereby.

Section 7.8 Investigation by Purchaser. Purchaser has conducted its own independent review and analysis of the Business, the Purchased Assets and the Assumed Liabilities, operations, technology, assets, liabilities, financial condition and prospects of the Business as formerly carried on by Seller and acknowledges that Seller has provided Purchaser with reasonable access to the personnel, properties, premises and records of the Business for this purpose. Purchaser has conducted its own independent review of all Orders of, and all motions, pleadings, and other submissions to, the Bankruptcy Court in connection with the Bankruptcy Case. In entering into this Agreement, Purchaser has relied solely upon its own investigation and analysis, and Purchaser (i) acknowledges that neither Seller nor any of its Affiliates or Related Persons makes or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Purchaser or its Affiliates or Related Persons, except for the representations and warranties contained in Article VI above (which are subject to the limitations and restrictions contained in this Agreement); and (ii) agrees, to the fullest extent permitted by Law, that none of Seller, its Affiliates or any of their respective Related Persons shall have any liability or responsibility whatsoever to Purchaser or its Affiliates or Related Persons on any basis (including, without limitation, in contract or tort, under federal or state securities Laws or otherwise, but excluding misrepresentation or concealment arising from actual fraud of Seller) based upon any information provided or made available, or statements made, to Purchaser or its Affiliates or Related Persons (or any omissions therefrom), including, without limitation, in respect of the specific representations and warranties of Seller set forth in this Agreement, except, with regard to Seller, for the representations and warranties contained in Article VI and, with respect to such representations and warranties, subject to the limitations and restrictions contained in this Agreement.

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**ARTICLE VIII
SELLER'S AND PURCHASER'S COVENANTS AND AGREEMENTS**

Section 8.1 Conduct of Business. Until Purchaser takes possession of the Purchased Assets, Seller shall use commercially reasonable efforts to preserve intact the Purchased Assets. Without limiting the generality of the foregoing (but subject to the express limitation set forth in the immediately preceding sentence), Seller will, other than in the Ordinary Course of Business or with Purchaser's consent, refrain from doing any of the following in respect of the Purchased Assets: (a) disposing of, or transferring, any Purchased Asset, (b) transferring any tangible Purchased Asset to any other location to the extent that such other location is not otherwise part of the Purchased Assets, or (c) except as otherwise provided or required in this Agreement, terminating, amending or modifying the material terms of any of the Assumed Contracts, Personal Property Leases or Real Property Leases.

Section 8.2 Mutual Covenants. The parties hereto mutually covenant (and subject to the other terms of this Agreement) that, if necessary after the Closing Date, they will cooperate with each other in determining whether filings are required to be made or consents (including any Required Consents) required to be obtained in any jurisdiction in connection with the consummation of the transactions contemplated by this Agreement and in making or causing to be made any such filings promptly and in seeking to obtain timely any such consents including any Required Consents (each party hereto shall furnish to the other and to the other's counsel all such information as may be reasonably required in order to effectuate the foregoing action).

Section 8.3 Access to Information. Prior to and through the Closing Date on which the Closing occurs, Seller shall cooperate with Purchaser and shall give Purchaser and its representatives (including Purchaser's accountants, consultants, counsel and employees), upon reasonable prior written notice and during normal business hours, full access to the properties, contracts, leases, equipment, employees, affairs, books, documents, records and other information of Seller to the extent relating to the Business, the Purchased Assets, Assumed Liabilities, and any other aspect of this Agreement and shall cause their respective officers, employees, agents and representatives to furnish to Purchaser all available documents, records and other information (and copies thereof), to the extent relating to the Business, the Purchased Assets, Assumed Liabilities, and any other aspect of this Agreement, in each case, as Purchaser may reasonably request. Parties agree that any information of Seller accessed by the Purchaser and its representative under this Section shall be Seller's Confidential Information.

Section 8.4 Public Announcement. No party hereto shall make or issue, or cause to be made or issued, any public announcement or written statement concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other party hereto (which will not be unreasonably withheld or delayed), unless counsel to such party advises that such announcement or statement is required by law (such as an obligation to disclose under federal securities laws of the United States) (in which case the parties hereto shall make reasonable efforts to consult with each other prior to such required announcement).

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Section 8.5 Taxes.

(a) Seller shall be responsible for all Taxes in connection with, relating to or arising out of the Business or the ownership of the Purchased Assets, or the Assumed Liabilities attributable to taxable periods, or portions thereof, ending on or before the Closing, which Taxes shall be an Excluded Liability. All state and local sales and use Taxes, to the extent attributable to periods prior to the Closing, shall be paid or otherwise discharged by Seller, including any and all sales or transfer taxes incurred or owed as a result of the transactions contemplated by this Agreement.

(b) Seller and Purchaser shall (i) provide the other with such assistance as may reasonably be requested by either of them in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to Taxes, (ii) retain and provide the other with any records or other information which may be relevant to such return, audit, examination or proceeding, and (iii) provide the other with any final determination of any such audit or examination proceeding or determination that affects any amount required to be shown on any Tax Return of the other for any period (which shall be maintained confidentially).

Section 8.6 Good Faith Efforts. Without limiting the specific obligations of any party hereto under any covenant or agreement hereunder, each party hereto shall use its good faith efforts to take all action and do all things necessary to consummate the transactions contemplated in this Agreement as soon as reasonably practicable.

Section 8.7 Further Assurances. From time to time after the Closing and without further consideration, Purchaser and Seller, at the request of the other, will execute and deliver such other instruments of conveyance and transfer or other instruments or documents, and take or arrange for such other actions, as may reasonably be required to effect any of the transactions contemplated by this Agreement or to provide any party hereto with the benefits intended to be conferred and conveyed by this Agreement; provided that, notwithstanding anything to the contrary in this Section 8.7 or any other provision of this Agreement, neither Purchaser nor Seller shall be required to execute any document or take any action that would (a) increase the liability or obligation of the party of whom such document or action is requested beyond that such party would have pursuant to the other provisions of this Agreement, (b) require or cause the party of whom such action or document is requested to initiate, join in or otherwise become a party to any Legal Proceeding, or (c) cause such party to incur any material cost or expense that is not already imposed upon it by another provision of this Agreement.

Section 8.8 Confidentiality.

(a) Each party acknowledges that it currently has and will directly or indirectly disclose Confidential Information to the other party in the course of negotiation of and performance of this Agreement. All such Confidential Information disclosed hereunder shall remain the sole property of the disclosing party (or other third party), and the receiving party shall have no interest in, or rights with respect thereto, except as set forth herein. For avoidance of doubt, any Confidential

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Information of Seller relating to the Purchased Assets and the Assumed Contracts shall be deemed to be Confidential Information of Purchaser as of the Closing Date ("Deemed Purchaser Confidential Information"), notwithstanding the fact that Seller or any of its officers, directors, employees or representatives have knowledge of such Deemed Purchaser Confidential Information obtained prior to the negotiation and performance of this Agreement. Each party agrees to treat such Confidential Information with the same degree of care and security as it treats its Confidential Information and, in any event, no less degree of care and security than a reasonably prudent business person would utilize to protect from disclosure and keep confidential its Confidential Information. Each party may disclose such Confidential Information only to those employees and agents who require such knowledge to perform services under this Agreement and each party shall be liable for the acts of such employees and agents in breach of this Section 8.8. Except as otherwise contemplated by this Agreement, neither party shall disclose the Confidential Information of the other party to any third party without the prior written consent of the disclosing party, and the duty of confidentiality created by this section shall survive any termination of the Agreement for a period of two (2) years.

(b) As used herein, "Confidential Information" means all information or data relating to a party and its Affiliates, operations, employees, products or services, clients, customers or potential customers. Confidential Information shall include vendor and customer information, pricing information, and the terms and conditions of this Agreement. Information shall not be considered Confidential Information to the extent, but only to the extent, that such information is: (i) not Deemed Purchaser Confidential Information and is already lawfully known to the receiving party as of the Closing Date as evidenced by reasonable documentary proof, free of any restriction at the time it is obtained; (ii) subsequent to the Closing Date is learned of by the receiving party from an independent third party free of any restriction and without breach of this Agreement; (iii) becomes publicly available through no wrongful act of or breach of this Agreement by the receiving party; (iv) independently developed by the receiving party without reference or access to any Confidential Information of the disclosing party; or (v) required to be disclosed by law.

(c) All documents, materials, objects and media containing a disclosing party's Confidential Information, including copies thereof, that are in the possession or control of the receiving party, shall, as between the parties, be the sole and exclusive property of the disclosing party and, at the disclosing party's request (excluding the Deemed Purchaser Confidential Information), shall be promptly returned to the disclosing party on or before the Closing Date and/or destroyed, with such return and/or destruction to be evidenced by a certification signed by an officer of the receiving party, the form and content of which must be reasonably acceptable to the disclosing party. Parties shall not create derivative works from or make modifications to the disclosing party's Confidential Information, provided, that such Confidential Information is not Deemed Purchaser Confidential Information.

Section 8.9 Care of Assets. Up to and including the Closing Date, Seller retains the risk of loss of any Purchased Assets and will maintain insurance to adequately protect the Purchased Assets from all reasonably foreseeable risks of loss during that time, including protecting all Intellectual Property, maintaining domain name registrations, protecting trade secrets, and similar actions.

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Section 8.10 Post-Closing. After the Closing, neither Seller nor any of its Affiliates shall, without the prior written consent of Purchaser, which shall not be unreasonably withheld, make any use of any name, mark, trade name, trademark, service mark or domain name incorporating “Innovation Pet”, or any reference confusingly similar to any of the foregoing, except to the extent necessary for Seller to pay its Liabilities, to prepare its Tax Returns and similar reports and to otherwise wind up and conclude its business. Within sixty (60) days after the Effective Date, Seller shall change its corporate name to a new name bearing no resemblance to its current name.

Section 8.11 Survival of Representations and Warranties. None of the representations and warranties of Seller or Purchaser contained in this Agreement or made in any other documents or instruments delivered pursuant to this Agreement shall survive the Closing hereunder.

ARTICLE IX CONDITIONS PRECEDENT TO PURCHASER’S OBLIGATION TO CLOSE

The obligation of Purchaser under this Agreement with respect to the purchase and sale of the Purchased Assets shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by Purchaser:

Section 9.1 Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by Seller shall be true and correct on and as of the Closing Date, except for any failure to be so true and correct that, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. Seller shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement and each other Transaction Document to be performed or complied with by it on or prior to the Closing.

Section 9.2 Authorizing Resolutions. Seller shall have delivered to Purchaser copies of the authorizing resolutions of its Board of Directors and applicable shareholders authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and all instruments and documents to be delivered in connection herewith and the transactions contemplated hereby or thereby.

Section 9.3 Officer’s Certificate. Seller shall have delivered to Purchaser a certificate executed by an executive officer of Seller as Purchaser may reasonably request in order to evidence compliance with the conditions set forth in Section 9.1.

Section 9.4 Bill of Sale; Assumption Agreement. Seller shall have delivered to Purchaser an executed Bill of Sale and Assumption Agreement pursuant to Sections 3.1 and 3.2 hereof.

Section 9.5 Consents and Approvals. The Bankruptcy Court shall have entered the Sale Order, and no Order staying, modifying, or amending the Sale Order shall be in effect (to the extent not agreed upon by the parties herein) on the Closing Date.

Section 9.6 No Violation of Orders. No preliminary or permanent injunction or other Order that declares this Agreement invalid in any respect or prevents the consummation of the transactions contemplated by this Agreement shall be in effect.

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Section 9.7 Cure of Defaults. At or prior to the Closing, any and all defaults under the Assumed Contracts and Real Property Leases (other than Qualifying Excluded Contracts and Leases) that are required to be cured under the Bankruptcy Code shall have been cured, so that such Assumed Contracts and Real Property Leases may be assumed by Seller and assigned to Purchaser in accordance with the provisions of Section 365 of the Bankruptcy Code.

ARTICLE X CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

The obligations of Seller under this Agreement with respect to the purchase and sale of the Purchased Assets shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by Seller:

Section 10.1 Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by Purchaser in this Agreement shall be true and correct on and as of the Closing Date, except for any failure to be so true and correct that, individually or in the aggregate, has not had and would not reasonably be expected to have a material adverse effect on the ability of Purchaser to timely consummate the transactions contemplated hereunder. Purchaser shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement and each other Transaction Document to be performed or complied with by it on or prior to the Closing.

Section 10.2 Authorizing Resolutions. Purchaser shall have delivered to Seller copies of the authorizing resolutions of its Board of Directors authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and all instruments and documents to be delivered in connection herewith and the transactions contemplated hereby or thereby.

Section 10.3 Assumption Agreement. Purchaser shall have delivered to Seller an executed Assumption Agreement pursuant to Section 3.2 hereof.

Section 10.4 Consents and Approvals. The Bankruptcy Court shall have entered the Sale Order, and no Order staying, modifying, or amending the Sale Order shall be in effect (to the extent not agreed upon by the parties herein) on the Closing Date.

Section 10.5 No Violation of Orders. No preliminary or permanent injunction or other Order that declares this Agreement invalid in any respect or prevents the consummation of the transactions contemplated by this Agreement shall be in effect.

Section 10.6 Cure of Defaults. At or prior to the Closing, any and all defaults under the Assumed Contracts and Real Property Leases (other than Qualifying Excluded Contracts and Leases) that are required to be cured under the Bankruptcy Code shall have been cured, so that such Assumed Contracts and Real Property Leases may be assumed by Seller and assigned to Purchaser in accordance with the provisions of Section 365 of the Bankruptcy Code.

Section 10.7 Net Closing Cash Payment. Purchaser shall deliver or cause to be delivered to Seller cash in an amount equal to the Net Closing Cash Payment, by wire transfer of immediately

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available funds to the account or accounts of Seller identified by Seller in writing reasonably in advance of the Closing.

ARTICLE XI TERMINATION

Section 11.1 Conditions of Termination. This Agreement may be terminated at any time before the Closing:

(a) By mutual written consent of Seller and Purchaser;

(b) By Seller, by notice to Purchaser, if Seller has previously provided Purchaser with written notice of Purchaser's failure to perform any material covenant of Purchaser contained in this Agreement and Purchaser has failed within five (5) days after such notice to perform such covenant; provided, however, that Seller shall not have the right to terminate this Agreement under this Section 11.1(b) if Seller is then in material breach of this Agreement;

(c) By Seller, by notice to Purchaser, on or after the date that is 60 calendar days after the Petition Date (the "Approval Termination Date"), if any condition contained in Section 10.5 or Section 10.6 has not been satisfied or waived; provided, however, that Seller shall not have the right to terminate this Agreement under this Section 11.1(c) if Seller is then in material breach of this Agreement;

(d) By Purchaser, by notice to Seller, if Purchaser has previously provided Seller with written notice of breach of any representation or warranty, or of a failure to perform any material covenant of Seller contained in Sections 6, 8, or 9 of this Agreement, and Seller has failed within five (5) days after such notice to perform such covenant; provided, however, that Purchaser shall not have the right to terminate this Agreement under this Section 11.1(d) if Purchaser is then in material breach of this Agreement;

(e) By Purchaser, by notice to Seller, after the Approval Termination Date, if any condition contained in Section 9.4 or Section 9.5 has not been satisfied or waived; provided, however, that Purchaser shall not have the right to terminate this Agreement under this Section 11.1(e) if Purchaser is then in material breach of this Agreement;

(f) By Purchaser, by notice to Seller, or by Seller, by notice to Purchaser, if the Bankruptcy Court enters an Order dismissing or converting the Bankruptcy Case into a case under Chapter 7 of the Bankruptcy Code, appointing a trustee in the Bankruptcy Case, or appointing an examiner with enlarged power related to the operation of the Business (beyond those set forth in Section 1106(a)(3) or (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code, or the occurrence of any of the foregoing;

(g) By Seller, five (5) Business Days after notice to Purchaser, if the Bankruptcy Court has not entered the Sale Order by the date that is 60 calendar days after the Petition Date; and

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(h) Automatically, upon the earlier of (i) Seller consummating an Alternative Transaction, and (ii) sixty (60) days following the date upon which the Bankruptcy Court issues a Final Order approving an Alternative Transaction.

Section 11.2 Effect of Termination; Remedies.

(a) In the event of termination of this Agreement pursuant to Section 11.1, this Agreement shall become null and void and have no effect (other than Article XI and Article XII, which shall survive termination), with no liability on the part of Seller or Purchaser, or their respective Affiliates or Related Persons, with respect to this Agreement, except for (i) the liability of a party for its own expenses pursuant to Section 12.2, (ii) the obligation of Purchaser under Section 5.2 and (iii) any liability provided for in Section 11.2(b) through Section 11.2(d), inclusive.

(b) If this Agreement is terminated pursuant to Section 11.1(a), Section 11.1(c), Section 11.1(d), Section 11.1(e), Section 11.1(f), Section 11.1(g) or Section 11.1(h) then the Good Faith Deposit shall, within three (3) Business Days, be returned by Seller to Purchaser.

(c) If this Agreement is terminated pursuant to Section 11.1(b), then Seller may, at its sole election (i) within three (3) Business Days, retain the Good Faith Deposit, as liquidated damages (the "Break-Up Fee"), or (ii) without limitation to Seller's remedies under clause (i) of this Section 11.2(c) require Purchaser to specifically perform under the terms of this Agreement and each of the Transaction Documents to which Purchaser is a party.

(d) Notwithstanding anything to the contrary herein, (i) Seller's entitlement to the Break-Up Fee (to the extent provided for in this Agreement) will constitute liquidated damages (and not a penalty) and, if Seller retains such amount, then notwithstanding anything to the contrary contained herein, such Break-Up Fee shall be the sole and exclusive remedy available to Seller and any other Person against Purchaser and Affiliates in connection with this Agreement and the transactions contemplated hereby (including as a result of the failure to consummate the Closing or for a breach or failure to perform hereunder or otherwise) and the Purchaser nor its Affiliates shall have any further liability relating to or arising out of this Agreement or the transactions contemplated hereby, and (ii) Purchaser's entitlement to the reimbursement of the Good Faith Deposit (to the extent provided for in this Agreement) shall be the sole and exclusive remedy (at law, in equity or otherwise) available to Purchaser and any other Person against Seller and its Affiliates in the event Seller is unable to consummate the Closing and neither the Seller nor its Affiliates shall have any further liability relating to or arising out of the failure to consummate the Closing. Each Party acknowledges that the agreements contained in this Section 11.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement.

ARTICLE XII MISCELLANEOUS

Section 12.1 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered

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personally, sent by telecopier, electronic mail, recognized overnight delivery service or registered or certified mail, return receipt requested, postage prepaid, to the following addresses:

If to Purchaser:

RS1Innovation, Inc.
1732 Wazee Street, Suite 202
Denver, CO 80202
Attention: Ingrid Alongi
Email: ingrid@restagefund.com

with a required copy to:

SK&S Law Group LLP
1616 17th St., Suite 564
Attention: Thomas Codevilla
Email: Codevilla@skandslegal.com

If to Seller:

Innovation Pet, Inc.
17011 Beach Blvd Suite 900
Huntington Beach, CA 92647
Attention: Victoria Coopman
Email: victoria@innovationpet.com

with a required copy to:

Shulman Bastian Friedman & Bui LLP
100 Spectrum Center Drive, Suite 600
Irvine, CA 92618
Attention: James Bastian
Email: JBastian@shulmanbastian.com

Notices delivered personally shall be effective upon delivery against receipt. Notices transmitted by electronic mail (with hard copy to follow) shall be effective when sent. Notices delivered by overnight mail shall be effective when received. Notices delivered by registered or certified mail shall be effective on the date set forth on the receipt of registered or certified mail, or seventy-two (72) hours after mailing, whichever is earlier.

Section 12.2 Expenses. To the extent that Purchaser is otherwise entitled thereto in accordance with the provisions of this Agreement, each party shall bear its own expenses and costs, including the fees of any attorney retained by it, incurred in connection with the preparation of this Agreement and the consummation of the transactions contemplated hereby.

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Section 12.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without application of principles of conflicts of law). In connection with any controversy arising out of or related to this Agreement, Seller and Purchaser hereby irrevocably consent to the exclusive jurisdiction of the state courts of the State of Colorado located in Denver, Colorado. Seller and Purchaser each irrevocably consents to service of process out of the aforementioned courts and waives any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or in connection with this Agreement brought in the aforementioned courts.

Section 12.4 Assignment. This Agreement binds and benefits the parties and their respective successors and assignees. No party hereto shall have the right to freely assign any of its rights under this Agreement, without the prior written consent of the other parties. No party may delegate any performance of its obligations under this Agreement, except that Purchaser may at any time delegate the performance of its obligations to any Affiliate of Purchaser so long as Purchaser remains fully responsible for the performance of the delegated obligation.

Section 12.5 Successors and Assigns. All agreements made and entered into in connection with this transaction shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

Section 12.6 Amendments; Waivers. No alteration, modification or change of this Agreement shall be valid except by an agreement in writing executed by the parties hereto. Except as otherwise expressly set forth herein, no failure or delay by any party hereto in exercising any right, power or privilege hereunder (and no course of dealing between or among any of the parties) shall operate as a waiver of any such right, power or privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any such right, power or privilege shall preclude the further or full exercise thereof.

Section 12.7 Entire Agreement. This Agreement (including the Exhibits and Disclosure Schedules which are hereby incorporated by reference into and made a part of this Agreement for all purposes) merges all previous negotiations and agreements between the parties hereto, either verbal or written, and constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement.

Section 12.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile and/or PDF signatures shall be deemed original signatures.

Section 12.9 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not materially (a) alter the terms of this Agreement, (b) diminish the benefits of this Agreement or (c) increase the burdens of this Agreement, for any Person.

EXECUTION

Section 12.10 Section Headings. The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section 12.11 Interpretation. As both parties have participated in the drafting of this Agreement, any ambiguity shall not be construed against either party as the drafter. Unless the context of this Agreement clearly requires otherwise, (a) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (b) “including” has the inclusive meaning frequently identified with the phrase “including, but not limited to” and (c) references to “hereof,” “hereunder” or “herein” or words of similar import relate to this Agreement.

Section 12.12 Third Parties. Nothing herein, expressed or implied, is intended to or shall confer on any Person other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 12.13 Specific Performance. The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without proof of actual damages or otherwise (and, to the fullest extent permitted by Law, each Party hereby waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to which they are entitled at law or in equity.

Section 12.14 Definitions. For purposes of this Agreement (including the Disclosure Schedules hereto) the terms defined in this Agreement shall have the respective meanings specified herein, and, in addition, the following terms shall have the following meanings:

“Affiliate” means, as to any Person, any other Person, which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other direct or indirect ownership interest, by Contract or otherwise.

“Alternative Transaction” means Seller consummating one or more transactions or series of transactions, whether a going concern sale, liquidation or otherwise, that involves a sale of all or substantially all of the Business or the Purchased Assets by Seller to a purchaser or purchasers other than Purchaser.

“Claims” encompasses the definition in Bankruptcy Code §101(5) and under this Agreement also includes any and all liabilities, rights, credits, defenses, allowances, rebates, choses in action, rights of recovery, set-off, causes of action, civil or criminal, any contributions received from or owed to charitable or other organizations, assertions of legal or moral responsibility, in each case known or unknown, pending or threatened, at law or in equity, direct or derivative, liquidated or unliquidated, matured or unmatured, disputed or undisputed, choate or

EXECUTION

inchoate, judgments, demands, rights of first refusal or offer, recoupment, rights of recovery, reimbursement, contribution, indemnity, exoneration, rights under products liability, alter ego, environmental, intellectual property (including any infringement thereof), tort, contract and any other legal or equitable basis of liability, charges of any kind or nature, debts arising in any way in connection with any agreements, acts or failures to act, and all pending, threatened, asserted or unasserted actions against Seller or any of its Affiliates, or any of their respective current or former officers, employees, agents or independent contractors, any of their assets or properties, the Business, or any of their operations or activities arising out of or relating to any matter, occurrence, action, omission or circumstance, and includes any Claims against Purchaser under doctrines of successor liability or any other ground or theory (which Claim may also be an Interest or Lien).

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any written or oral contract, agreement, lease, license, instrument, or other document or commitment, arrangement, undertaking, practice or authorization that is binding on any Person or its property under any applicable Law.

“Disclosure Schedules” means the schedules executed and delivered by Seller to Purchaser as of the Closing Date setting forth the exceptions to the representations and warranties contained in Article VI and certain other information called for by this Agreement. Unless otherwise specified, each reference in this Agreement to any numbered schedule is a reference to the corresponding numbered schedule that is included in the Disclosure Schedule (unless, and to the extent, the relevance to other representations and warranties is readily apparent from the actual text of the disclosures).

“Employee Plans” means any employment, consulting, severance or other similar contract, plan, arrangement or policy, and each plan, arrangement (written or oral), program, agreement or commitment providing for insurance coverage (including any self-insured arrangements), workers’ compensation, disability benefits, supplemental unemployment benefits, vacation benefits, retirement benefits, life, health, disability or accident benefits or for deferred compensation, profit-sharing bonuses, stock options, stock purchases or other forms of incentive compensation or post-retirement insurance, compensation or benefits which is entered into, maintained, contributed to or required to be contributed to, by Seller or an ERISA Affiliate or under which Seller or any ERISA Affiliate may incur any liability including under any “employee pension benefit plan” as defined in Section 3(2) of ERISA and any “employee welfare benefit plan” as defined in Section 3(1) of ERISA which Seller or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, or has maintained, administered, contributed to or was required to contribute to, or under which Seller or any ERISA Affiliate may incur any liability.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

“Governmental Authority” means any federal, state, provincial, municipal and foreign governmental entity, authority, or agency, or any other political subdivision, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

EXECUTION

“Interests” means all rights and entitlements of any nature including, without limitation, security interests, assignments of Liens or Claims, licenses, leases, contract rights, indentures, instruments, licenses, options, escheatment, abandoned property, unclaimed property, covenants, conditions, zoning, planning and any other restrictions, easements, encroachments, Permits or other interests in property or limitations on the use of real property or irregularities in title, rights of first refusal, rights to injunctive or other legal relief, any attributes of ownership, rights or restrictions of any kind and nature, whenever incurred, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, matured or unmatured, legal or equitable (which Interests may also be Liens or Claims).

“Knowledge” means in the case of Seller, the actual, current, or constructive knowledge of Victoria Coopman or Timothy Taft.

“Laws” means any federal, state, provincial, local or foreign statute, law, ordinance, regulation, rule, code, order or other requirement or rule of law.

“Legal Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Liability” means any liability, indebtedness, obligation, expense, claim, loss, cost, damage, obligation, responsibility, guaranty or endorsement of or by any Person, absolute or contingent, accrued or unaccrued, known or unknown, due or to become due, liquidated or unliquidated, whether or not secured.

“Liens” means any security interests, mortgages, interests, liens, pledges, charges, defects of title, options and other rights of third parties, rights of first refusal, or any other encumbrance or restriction, but excludes Permitted Liens.

“Material Adverse Effect” means any event or change or circumstance, in respect of the operation of the Business and Purchased Assets that, individually or when aggregated with any one or more of the other such changes, events or circumstances, has had or could reasonably be expected to have a material adverse effect on (i) the Purchased Assets, taken as a whole, or (ii) the ability of Purchaser to own or use the Purchased Assets after the Closing; provided, however, that none of the following events, changes or circumstances (individually or when aggregated with any one or more of the other such changes, events or circumstances) shall be deemed to be or constitute a Material Adverse Effect, and none of the following changes, events or circumstances (individually or when aggregated with any one or more of the other such changes, events or circumstances) shall be taken into account when determining whether a Material Adverse Effect has occurred: (a) pandemic, riot, war, acts of nature, general strike, acts of terror, (b) general economic, market or political changes or conditions, (c) events, changes or circumstances which generally affect the industries in which Seller conducts business, (d) changes in Laws, unless such Laws or conditions apply solely or principally to the Business or Seller, (e) actions or omissions taken or not taken by or on behalf of Seller in compliance with a specific request from or consented to in writing by Purchaser following the execution of this Agreement, and (f) events, changes or circumstances arising from or caused by the announcement of this Agreement.

EXECUTION

“Ordinary Course of Business” means the ordinary course of business of Seller consistent with the current custom and practice of Seller (including with respect to quantity and frequency) in light of the Seller’s current financial distress.

“Permitted Liens” means (i) liens for Taxes on that are not yet due and payable, (ii) easements, covenants, conditions, restrictions and other matters of record affecting real property, leasehold estates or any interest therein that do not in any material respect detract from the value thereof and do not individually or in the aggregate in any material respect interfere with the use, ownership or operation of the property subject thereto in the Business, and (iii) the effect of any building and zoning regulations, now existing or hereafter in effect.

“Person” means any corporation, partnership, limited liability company, joint venture, business association, entity or individual.

“Related Person” means, with respect to any Person, all past, present and future directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, investment bankers or representatives of any such Person.

“Taxes” means taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, territorial, local or foreign taxing authority, including income, gross receipts, excise, property, sales, transfer, franchise, payroll, withholding, social security and other taxes, and shall include any interest, penalties or additions attributable thereto.

“Tax Return” means any return, report, information return or other document (including any related or supporting information).

[Remainder of Page Intentionally Left Blank]

EXECUTION

IN WITNESS WHEREOF, each of the parties hereto has caused this Asset Purchase Agreement to be executed by its duly authorized representative as of the Effective Date.

SELLER:

Innovation Pet, Inc.

By: 

Name: Victoria Coopman

Title: CEO

PURCHASER:

RS1Innovation, Inc.

By: _____

Name: Ingrid Alongi

Title: President

EXECUTION

IN WITNESS WHEREOF, each of the parties hereto has caused this Asset Purchase Agreement to be executed by its duly authorized representative as of the Effective Date.


SELLER:

Innovation Pet, Inc.

By: _____
Name: Victoria Coopman
Title: CEO

PURCHASER:

RS1Innovation, Inc.

By: 
Name: Ingrid Alongi
Title: President

EXECUTION

Exhibit 1

Bidding Procedures Order

[Asset Purchase Agreement – Bidding Procedure Order]

EXECUTION

Exhibit A

Form of Bill of Sale

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Innovation Pet, Inc., a California corporation ("Seller"), does hereby grant, bargain, transfer, sell, assign, convey and deliver to RS1Innovation, Inc., a Delaware corporation ("Purchaser"), all of its right, title, and interest in and to the Purchased Assets, as such term is defined in the Asset Purchase Agreement set forth above, by and between Purchaser and Seller, to have and to hold the same unto Purchaser and its successors and assigns, forever.

Purchaser acknowledges that Seller makes no representation or warranty with respect to the assets being conveyed hereby except as specifically set forth in the Asset Purchase Agreement and the Disclosure Schedules attached thereto.

Seller for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Purchaser, Seller will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably required by Purchaser in order to assign, transfer, set over, convey, assure, and vest in Purchaser, including its successors and assigns, title to the assets sold, conveyed, and transferred by this Bill of Sale.

IN WITNESS WHEREOF, Seller has duly executed this Bill of Sale as of _____ 2020.

Innovation Pet, Inc.

By _____
Name: Victoria Coopman
Title: President & CEO

EXECUTION

Exhibit B

Form of Assumption Agreement

This Assignment and Assumption Agreement (the "Agreement"), effective as of _____ 2020 (the "Effective Date"), is by and between Innovation Pet, Inc., a California corporation ("Assignor"), and RSInnovation, Inc., a Delaware Corporation ("Assignee").

WHEREAS, Assignor and Assignee have entered into that certain Asset Purchase Agreement, dated _____, 2020 (the "Asset Purchase Agreement"), pursuant to which, among other things, Seller has agreed to sell and assign all of its rights, title and interests in, and Purchaser has agreed to assume all of Seller's duties and obligations under, the Real Property Leases, Assumed Contracts, Assumed Liabilities, and Intellectual Property (as defined in the Asset Purchase Agreement).

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Asset Purchase Agreement.

2. Assignment and Assumption. Assignor hereby assigns, grants, conveys and transfers to Assignee all of Assignor's right, title and interest in and to, and Assignee hereby accepts:

(a) the trademark registrations and trademark applications set forth on Schedule A hereto and all issuances, extensions, and renewals thereof (the "Assigned Trademarks"), together with the goodwill of the business connected with the use of, and symbolized by, the Assigned Trademarks;

(b) all rights of any kind whatsoever of Seller accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions, and otherwise throughout the world;

(c) any and all royalties, fees, income, payments, and other proceeds now or hereafter due or payable with respect to any and all of the foregoing;

(d) any and all claims and causes of action with respect to any of the foregoing, whether accruing before, on, or after the Effective Date, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, dilution, misappropriation, violation, misuse, breach, or default, with the right but no obligation to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages;

(e) all trade names, websites, and domain names owned or used by Seller set forth in Schedule A hereto, including extensions, and renewals thereof, together with the goodwill of the business connected with the use of, and symbolized by, such Intellectual Property; and

EXECUTION

(f) all of Seller's burdens, obligations and liabilities in connection with the Purchased Assets and the Assumed Liabilities.

2.1 Assignment and Assumption of Real Property Leases. Assignor hereby assigns, delegates, grants, conveys and transfers to Assignee all of Assignor's right, title, interest and obligations of Assignor under the Real Property Leases (as identified in Schedule 2.1(d) of the Asset Purchase Agreement), including all security and other deposits related thereto, prepared rent and appurtenances thereto and associated therewith, and Assignee accepts such assignment and delegation hereto, assumes the Real Property Leases, agrees to pay all rent and other charges accruing under the Real Property Leases from and after the Effective Date, and agrees to observe and perform directly to the landlord all of the other covenants, agreements and obligations to be observed and/or performed by the tenant under the Real Property Leases from and after the Effective Date.

3. Recordation. Seller hereby authorizes the Commissioner for Trademarks in the United States Patent and Trademark Office to record and register this the assignment of the Assigned Patents and Assigned Trademarks upon request by Purchaser. Following the Effective Date, upon Purchaser's reasonable request, Seller shall take such steps and actions, and provide such cooperation and assistance to Purchaser and its successors, assigns, and legal representatives, including the execution and delivery of any affidavits, declarations, oaths, exhibits, assignments, powers of attorney, or other documents, as may be reasonably necessary to effect, evidence, or perfect the assignment of the Assigned Patents and Assigned Trademarks to Purchaser, or any assignee or successor thereto.

4. Terms of the Asset Purchase Agreement. The terms of the Asset Purchase Agreement, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Assumed Contracts and Assumed Liabilities are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Asset Purchase Agreement are not superseded hereby but will remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms hereof, the terms of the Asset Purchase Agreement will govern.

5. Governing Law. This Agreement and any dispute related to it is governed by and will be construed and enforced in accordance with the substantive laws of the State of Delaware, without reference to conflicts of Laws principles that would result in laws of a jurisdiction other than the State of Delaware governing.

6. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together are one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission will have the same legal effect as delivery of an original signed copy of this Agreement.

7. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

EXECUTION

[Signature Page Follows]

[Asset Purchase Agreement – Exhibit B]

EXECUTION

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

Seller: Innovation Pet, Inc.

By _____
Name:
Title:

Purchaser: RSI Innovation, Inc.

By _____
Name:
Title:

EXECUTION

Schedule B

TRADE NAMES:

- "Healthy Hen"

TRADEMARKS:

Trademark	Registration, Patent, Serial or Application Number	Government Entity Registered With
Coops & Feathers	4892812	USPTO
Kitty Arcade	4584093	USPTO
Critter Connection	4563538	USPTO
Kitty Connection	4497989	USPTO
Rolls Rocky	5323489	USPTO

DOMAIN:

AMERICAN-INSPIRED.COM
beyondbeautypet.com
cluckbasket.com
clucksbox.com
coopsandfeathers.com
coopsandfeathers.pet
DELIGHTFULPET.COM
flockandhomehealth.com
healthy-hen.com
healthyhen.com
healthyhenessentials.com
healthyhenherbal.com
healthyhenherbals.com
healthyhentreat.com
healthyhentreats.com
healthypet.pet
healthypetfood.pet
homesandquackers.pet
housesandpaws.com
housesandpaws.pet
hutchesandcottontails.pet
INNOVATIONPET.COM
innovationpet.pet
INNOVATIONPETPRODUCTS.COM
INNOVATIONPETS.COM
INNOVATIVEPETCOMPANY.COM

EXECUTION

KITTYARCADE.COM
kittyconnection.com
kittyconnection.pet
onepawnation.pet
petoverstock.pet
petsuppliesshop.pet
theluckbasket.com
THEINNOVATIVEPET.COM
WONDERLANDPET.COM
WONDERLANDPETS.COM

EXECUTION

Disclosure Schedules to Asset Purchase Agreement

These Disclosure Schedules have been prepared in connection with the Asset Purchase Agreement to which they are attached (the "Agreement"), effective as of _____ 2020, by and between Purchaser and Seller. These Schedules and constitute the Disclosure Schedules referred to in the Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.

The representations and warranties of Seller in Article VI of the Agreement are made subject to the exceptions and qualifications set forth herein. These Disclosure Schedules are qualified in their entirety by reference to specific provisions of the Agreement, and are not intended to constitute, and shall not be construed as constituting, separate representations or warranties of Seller.

The inclusion of any information (including dollar amounts) in any section of these Disclosure Schedules shall not be deemed to be an admission or acknowledgment by Seller that such information is required to be listed in such section or is material to or outside the ordinary course of the Business of Seller, nor shall such information be deemed to establish a standard of materiality (and the actual standard of materiality may be higher or lower than the matters disclosed by such information). In addition, matters reflected in a Disclosure Schedule are not necessarily limited to matters required by the Agreement to be reflected in such Disclosure Schedule. Any such additional matters are set forth for informational purposes only and do not necessarily include (and shall not be deemed to include) other matters of a similar nature.

Any information disclosed in these Disclosure Schedules under any section number shall be deemed to be disclosed and incorporated in the Disclosure Schedule under any other section to the extent the relevance of such information to such other section would be reasonably apparent to a reader of such information.

EXECUTION

Schedule 2.1(b)
Personal Property Leases

None.

EXECUTION

Schedule 2.1(c)
Assumed Contracts

None.

EXECUTION

Schedule 2.1(d)
Real Property Leases

1. Lease, dated February 11, 2020, by and between Innovation Pet, Inc. and Coronado Investors Properties, LLC. regarding premises located at 728 S. Waterman Ave., Unit C46, San Bernardino, California.

EXECUTION

Schedule 2.1(f)
Intellectual Property

TRADENAMES:

- "Healthy Hen"

TRADEMARKS:

Trademark	Registration, Patent, Serial or Application Number	Government Entity Registered With
Coops & Feathers	4892812	USPTO
Kitty Arcade	4584093	USPTO
Critter Connection	4563538	USPTO
Kitty Connection	4497989	USPTO
Rolls Rocky	5323489	USPTO

DOMAIN:

AMERICAN-INSPIRED.COM
beyondbeautypet.com
cluckbasket.com
clucksbox.com
coopsandfeathers.com
coopsandfeathers.pet
DELIGHTFULPET.COM
flockandhomehealth.com
healthy-hen.com
healthyhen.com
healthyhenessentials.com
healthyhenherbal.com
healthyhenherbals.com
healthyhentreat.com
healthyhentreats.com
healthypet.pet
healthypetfood.pet
homesandquackers.pet
housesandpaws.com
housesandpaws.pet
hutchesandcottontails.pet
INNOVATIONPET.COM
innovationpet.pet
INNOVATIONPETPRODUCTS.COM
INNOVATIONPETS.COM

EXECUTION

INNOVATIVEPETCOMPANY.COM
KITTYARCADE.COM
kittyconnection.com
kittyconnection.pet
onepawnation.pet
petoverstock.pet
petsuppliesshop.pet
theluckbasket.com
THEINNOVATIVEPET.COM
WONDERLANDPET.COM
WONDERLANDPETS.COM

EXECUTION

Schedule 2.2
Excluded Assets

2.2(c)

- All vendor contracts.
- All sales representative contracts.

2.2(e)

- None.

EXECUTION

Schedule 2.3(a)
Assumed Liabilities

None.

EXECUTION

Schedule 6.4
Legal Proceedings

None.

EXECUTION

Schedule 6.5
Real Property

1. 738 S. Waterman Ave., Unit C46, San Bernardino, CA 92408

EXECUTION

Schedule 6.6
Compliance with Laws

None.

EXECUTION

Schedule 6.8
Labor Matters

None.

EXHIBIT 2

EXHIBIT 2 – CONTRACTS TO BE ASSUMED

<u>Description of Contract</u>	<u>Counterparty</u>	<u>Cure Amount</u>
Real Property Lease for premises located at 728 S. Waterman Ave., Unit C46, San Bernardino, CA	Coronado Investors Properties, LLC	\$2,414.00

EXHIBIT 3



California Secretary of State

Business Programs Division

1500 11th Street, Sacramento, CA 95814

SHULMAN BASTIAN FRIEDMAN & BUI LLP
JAI H. KIM, ESQ.
100 SPECTRUM CENTER DRIVE
SUITE 600
IRVINE, CA 92618

Request Date: 10/21/2020 3:16 PM
Information
Request No.: U200026905222
Certification No.: 004102919

LIEN SEARCH CERTIFICATE

The search results herein reflect only the specific information requested. The results of this Debtor search will not reflect variances of this name. If the Debtor is known under other personal names, trade names, business entities, or addresses, separate searches of these names will have to be requested and conducted. The Secretary of State, his officers and agents disclaim any and all liability for claims resulting from other filings on which the name of the Debtor can be found in any other form than which was requested.

Search Criteria:

Debtor Organization: INNOVATION PET INC
Request Type: Lien Information Request (UCC 11)
All Records On File (Lapsed and Unlapsed), List Only

Lien Listing

Lien File No.: 147408153922 **Filed: 04/17/2014 11:16 AM** **Lapse: 04/17/2024 11:59 PM**
Lien Type: Financing Statement

Debtor(s): INNOVATION PET, INC., 22187 PINE DRIVE, CEDARPINES PARK, CA 92322
Secured Party(s): PLAZA BANK, 18200 VON KARMAN, SUITE 500, IRVINE, CA 92612

Amendment - Continuation

Amendment No.: 1876839231 Filed: 11/21/2018 07:04 PM

Lien File No.: 157448171149 **Filed: 01/30/2015 03:15 PM** **Lapse: 01/30/2025 11:59 PM**
Lien Type: Financing Statement

Debtor(s): INNOVATION PET, INC., P.O. BOX 9251, CEDARPINES PARK, CA 92322
Secured Party(s): PLAZA BANK, 18200 VON KARMAN, SUITE 500, IRVINE, CA 92612

Amendment - Continuation

Amendment No.: 1977267429 Filed: 08/06/2019 10:54 AM

Lien File No.: 157499759612 **Filed: 12/16/2015 09:49 AM** **Lapse: 12/16/2025 11:59 PM**
Lien Type: Financing Statement

Debtor(s): INNOVATION PET, INC., 22187 PINE DRIVE, CEDARPINES PARK, CA 92322
Secured Party(s): CAPFLOW FUNDING GROUP MANAGERS LLC, 201 ROUTE 17 NORTH, SUITE 805,
RUTHERFORD, NJ 07070

SHULMAN BASTIAN FRIEDMAN & BUI LLP
JAI H. KIM, ESQ.
100 SPECTRUM CENTER DRIVE
SUITE 600
IRVINE, CA 92618

Request Date: 10/21/2020 3:16 PM
Information
Request No.: U200026905222
Certification No.: 004102919

Lien Listing

Lien File No.: 167551592900 **Filed: 10/19/2016 09:09 AM** **Lapse: 10/19/2021 11:59 PM**

Lien Type: Financing Statement

Debtor(s): INNOVATION PET, INC, PO BOX 9751, CEDARPINES PARK, CA 92322

Secured Party(s): CAPITAL 2 THRIVE, 1801 BROADWAY STE 1350, DENVER, CO 80202

Amendment - Amendment

Amendment No.: 1675526303 Filed: 10/25/2016 01:20 PM

Lien File No.: 187642508192 **Filed: 04/09/2018 06:15 PM** **Lapse: 04/09/2028 11:59 PM**

Lien Type: Notice of State Tax Lien

Debtor(s): INNOVATION PET, INC., 17011 BEACH BLVD STE 900, HUNTINGTON BEACH, CA
926475998

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, 722 CAPITOL MALL, SACRAMENTO, CA
95814

Amendment - Termination

Amendment No.: 1876511117 Filed: 05/30/2018 03:24 PM

Lien File No.: 197729283139 **Filed: 08/22/2019 10:10 AM** **Lapse: 08/22/2024 11:59 PM**

Lien Type: Financing Statement

Debtor(s): INNOVATION PET, INC., 17011 BEACH BLVD, SUITE 900, HUNTINGTON BEACH, CA 92647

Secured Party(s): PMW LLC, 3575 RINGSBY COURT, UNIT 411, DENVER, CO 80216

Lien File No.: 197752901475 **Filed: 12/17/2019 05:00 PM** **Lapse: 01/16/2030 11:59 PM**

Lien Type: Notice of Federal Tax Lien

Debtor(s): INNOVATION PET INC, A CORPORATION, 17011 BEACH BLVD STE 900, HUNTINGTON
BEACH, CA 92647

Secured Party(s): IRS/OHIO, P.O. BOX 145595 US

Lien File No.: 207771286444 **Filed: 04/02/2020 03:26 PM** **Lapse: 04/02/2030 11:59 PM**

Lien Type: Notice of State Tax Lien

Debtor(s): INNOVATION PET, INC., 17011 BEACH BLVD STE 900, HUNTINGTON BEACH, CA
926475998

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, 722 CAPITOL MALL, SACRAMENTO, CA
95814

Lien File No.: 207784399110 **Filed: 06/02/2020 03:38 PM** **Lapse: 06/02/2030 11:59 PM**

Lien Type: Notice of State Tax Lien

Debtor(s): INNOVATION PET, INC., PO BOX 9251, CEDARPINES PARK, CA 923229251

Secured Party(s): EMPLOYMENT DEVELOPMENT DEPARTMENT, 722 CAPITOL MALL, SACRAMENTO, CA
95814

Certification No.: 004102919

Page Count: 3

I, Alex Padilla, Secretary of State of California, do hereby certify that the above listing is a record of all presently active financing statements, tax liens, attachment liens and judgment liens, including any change documents relating to them, which name the referenced debtor, subject to any above-stated search qualifiers and are on file in my office as of **09/30/2020 11:59 PM**.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California on October 21, 2020.

Alex Padilla
Secretary of State

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
Corporation Service Company
800-858-5294

B. SEND ACKNOWLEDGMENT TO: (Name and Address)
CORPORATION SERVICE COMPANY
801 ADLAI STEVENSON DRIVE
SPRINGFIELD, IL 62703
USA

DOCUMENT NUMBER: 42613430002
FILING NUMBER: 14-7408153922
FILING DATE: 04/17/2014 11:16
IMAGE GENERATED ELECTRONICALLY FOR XML FILING
THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Innovation Pet, Inc.						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS 22187 Pine Drive		CITY Cedarpines Park		STATE CA	POSTAL CODE 92322	COUNTRY USA
1d. SEE INSTRUCTIONS	ADD'L DEBTOR INFO		1e. TYPE OF ORGANIZATION Corporation	1f. JURISDICTION OF ORGANIZATION CA	1g. ORGANIZATIONAL ID#, if any <input checked="" type="checkbox"/> NONE	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME						
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS		CITY		STATE	POSTAL CODE	COUNTRY
2d. SEE INSTRUCTIONS	ADD'L DEBTOR INFO		2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID#, if any <input checked="" type="checkbox"/> NONE	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Plaza Bank						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS 18200 Von Karman, Suite 500		CITY Irvine		STATE CA	POSTAL CODE 92612	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:
All of Grantor's assets, including without limitation: All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any

5. ALT DESIGNATION: <input type="checkbox"/> LESSEE/LESSOR <input type="checkbox"/> CONSIGNEE/CONSIGNOR <input type="checkbox"/> BAILEE/BAILOR <input type="checkbox"/> SELLER/BUYER <input type="checkbox"/> AG. LIEN <input type="checkbox"/> NON-UCC FILING	
6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS Attach Addendum [if applicable]	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2

8. OPTIONAL FILER REFERENCE DATA
700072600-3 [86239376]

FILING OFFICE COPY

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT		
9a. ORGANIZATION'S NAME Innovation Pet, Inc.		
OR 9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

DOCUMENT NUMBER: 42613430002
IMAGE GENERATED ELECTRONICALLY FOR XML FILING
THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only <u>one</u> debtor name (1a or 1b) - do not abbreviate or combine names				
11a. ORGANIZATION'S NAME				
OR	11b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME SUFFIX
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
11d. SEE INSTRUCTIONS	ADD'L DEBTOR INFO	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID#, if any <input type="checkbox"/> NONE

12. <input type="checkbox"/> ADDITIONAL SECURED PARTY'S or <input type="checkbox"/> ASSIGNOR S/P'S NAME - Insert only <u>one</u> name (12a or 12b)				
12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME SUFFIX
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY

<p>13. This FINANCING STATEMENT covers <input type="checkbox"/> timber to be cut or <input type="checkbox"/> as-extracted collateral, or is filed as a <input type="checkbox"/> fixture filing.</p> <p>14. Description of real estate:</p>	<p>15. Additional collateral description:</p> <p>such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property and wherever located; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.</p>
<p>15. Name and address of RECORD OWNER of above-described real estate (if Debtor does not have a record interest):</p>	<p>17. Check <u>only</u> if applicable and check <u>only</u> one box. Debtor is a <input type="checkbox"/> Trust or <input type="checkbox"/> Trustee acting with respect to property held in trust or <input type="checkbox"/> Decedent's Estate</p> <p>18. Check <u>only</u> if applicable and check <u>only</u> one box. <input type="checkbox"/> Debtor is a TRANSMITTING UTILITY <input type="checkbox"/> Filed in connection with a Manufactured-Home Transaction - effective 30 years <input type="checkbox"/> Filed in connection with a Public-Finance Transaction - effective 30 years</p>

FILING OFFICE COPY

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Corporation Service Company 800-858-5294
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) CORPORATION SERVICE COMPANY 801 ADLAI STEVENSON DRIVE Springfield, IL 62703-4261 USA

DOCUMENT NUMBER: 75059280002
FILING NUMBER: 18-76839231
FILING DATE: 11/21/2018 19:04

**IMAGE GENERATED ELECTRONICALLY FOR XML FILING
 THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY**

1a. INITIAL FINANCING STATEMENT FILE NUMBER 14-7408153922	1b. <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Filer: <u>Attach</u> Amendment Addendum (Form UCC3Ad) <u>and</u> provide Debtor's name in item 13																
2. <input type="checkbox"/> TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement																	
3. <input type="checkbox"/> ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, <u>and</u> address of Assignee in item 7c <u>and</u> name of Assignor in item 9 For partial assignment, complete items 7 and 9 <u>and</u> also indicate affected collateral in item 8																	
4. <input type="checkbox"/> CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law																	
5. <input type="checkbox"/> PARTY INFORMATION CHANGE: Check <u>one</u> of these two boxes: AND Check <u>one</u> of these three boxes to: This Change affects <input type="checkbox"/> Debtor <u>or</u> <input type="checkbox"/> Secured Party of record. <input type="checkbox"/> CHANGE name and/or address: Complete item 6a or 6b; <u>and</u> item 7a and 7b <u>and</u> item 7c <input type="checkbox"/> ADD name: Complete item 7a or 7b, <u>and</u> item 7c <input type="checkbox"/> DELETE name: Give record name to be deleted in item 6a or 6b																	
6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only <u>one</u> name (6a or 6b)																	
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="4" style="padding: 5px;">6a. ORGANIZATION'S NAME</td> </tr> <tr> <td style="width: 40%; padding: 5px;">6b. INDIVIDUAL'S SURNAME</td> <td style="width: 30%; padding: 5px;">FIRST PERSONAL NAME</td> <td style="width: 20%; padding: 5px;">ADDITIONAL NAME(S)/INITIAL(S)</td> <td style="width: 10%; padding: 5px;">SUFFIX</td> </tr> </table>	6a. ORGANIZATION'S NAME				6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX								
6a. ORGANIZATION'S NAME																	
6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX														
7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only <u>one</u> name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)																	
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="4" style="padding: 5px;">7a. ORGANIZATION'S NAME</td> </tr> <tr> <td colspan="4" style="padding: 5px;">7b. INDIVIDUAL'S SURNAME</td> </tr> <tr> <td colspan="4" style="padding: 5px;">INDIVIDUAL'S FIRST PERSONAL NAME</td> </tr> <tr> <td colspan="3" style="padding: 5px;">INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)</td> <td style="padding: 5px;">SUFFIX</td> </tr> </table>	7a. ORGANIZATION'S NAME				7b. INDIVIDUAL'S SURNAME				INDIVIDUAL'S FIRST PERSONAL NAME				INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX
7a. ORGANIZATION'S NAME																	
7b. INDIVIDUAL'S SURNAME																	
INDIVIDUAL'S FIRST PERSONAL NAME																	
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX														
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; padding: 5px;">7c. MAILING ADDRESS</td> <td style="width: 20%; padding: 5px;">CITY</td> <td style="width: 10%; padding: 5px;">STATE</td> <td style="width: 20%; padding: 5px;">POSTAL CODE</td> <td style="width: 10%; padding: 5px;">COUNTRY</td> </tr> </table>		7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY											
7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY													
8. <input type="checkbox"/> COLLATERAL CHANGE: <u>Also</u> check <u>one</u> of these four boxes: <input type="checkbox"/> ADD collateral <input type="checkbox"/> DELETE collateral <input type="checkbox"/> RESTATE covered collateral <input type="checkbox"/> ASSIGN collateral Indicate collateral:																	
9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only <u>one</u> name (9a or 9b) (name of Assignor, if this is an Assignment) If this is an Amendment authorized by a DEBTOR, check here <input type="checkbox"/> <u>and</u> provide name of authorizing Debtor																	
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="4" style="padding: 5px;">a. ORGANIZATION'S NAME Plaza Bank</td> </tr> <tr> <td style="width: 40%; padding: 5px;">b. INDIVIDUAL'S SURNAME</td> <td style="width: 30%; padding: 5px;">FIRST PERSONAL NAME</td> <td style="width: 20%; padding: 5px;">ADDITIONAL NAME(S)/INITIAL(S)</td> <td style="width: 10%; padding: 5px;">SUFFIX</td> </tr> </table>	a. ORGANIZATION'S NAME Plaza Bank				b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX								
a. ORGANIZATION'S NAME Plaza Bank																	
b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX														
10. OPTIONAL FILER REFERENCE DATA: :700072600-3 [155309715]																	

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Corporation Service Company 800-858-5294
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Corporation Service Company 801 ADLAI STEVENSON DRIVE SPRINGFIELD, IL 62703 USA

DOCUMENT NUMBER: 47016090002
FILING NUMBER: 15-7448171149
FILING DATE: 01/30/2015 15:15

IMAGE GENERATED ELECTRONICALLY FOR XML FILING
THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only <u>one</u> Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here <input type="checkbox"/> and provide the Individual Debtor Information in item 10 of the Financing Statement Addendum (Form UCC1Ad)				
OR	1a. ORGANIZATION'S NAME Innovation Pet, Inc.			
	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS P.O. Box 9251		CITY Cedarpines Park	STATE CA	POSTAL CODE 92322
2. DEBTOR'S NAME: Provide only <u>one</u> Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here <input type="checkbox"/> and provide the Individual Debtor Information in item 10 of the Financing Statement Addendum (Form UCC1Ad)				
OR	2a. ORGANIZATION'S NAME			
	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only <u>one</u> Secured Party name (3a or 3b)				
OR	3a. ORGANIZATION'S NAME Plaza Bank			
	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 18200 Von Karman, Suite 500		CITY Irvine	STATE CA	POSTAL CODE 92612
4. COLLATERAL: This financing statement covers the following collateral: All of Grantor's assets, including without limitation: All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures, all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any				
5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative				
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility			6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor				
8. OPTIONAL FILER REFERENCE DATA: [95908524]				

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UCC FINANCING STATEMENT ADDENDUM**FOLLOW INSTRUCTIONS**

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

OR	9a. ORGANIZATION'S NAME Innovation Pet, Inc.	
	9b. INDIVIDUAL'S SURNAME	
	FIRST PERSONAL NAME	
	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

DOCUMENT NUMBER: 47016090002

IMAGE GENERATED ELECTRONICALLY FOR XML FILING
THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

OR	10a. ORGANIZATION'S NAME			
	10b. INDIVIDUAL'S SURNAME			
	INDIVIDUAL'S FIRST PERSONAL NAME			
	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX

10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

OR	11a. ORGANIZATION'S NAME			
	11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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12. ADDITIONAL SPACE FOR ITEM 4 (collateral):

such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property and wherever located; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing.

15. Name and address of RECORD OWNER of real estate described in Item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

FILING OFFICE COPY

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Corporation Service Company 800-858-5294
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) CORPORATION SERVICE COMPANY 801 ADLAI STEVENSON DRIVE Springfield, IL 62703-4261 USA

DOCUMENT NUMBER: 80658870002
FILING NUMBER: 19-77267429
FILING DATE: 08/06/2019 10:54

**IMAGE GENERATED ELECTRONICALLY FOR XML FILING
 THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY**

1a. INITIAL FINANCING STATEMENT FILE NUMBER 15-7448171149	1b. <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Filer: <u>Attach Amendment Addendum (Form UCC3Ad)</u> and provide Debtor's name in item 13
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2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☒ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:
 Check one of these two boxes: **AND** Check one of these three boxes to:

This Change affects <input type="checkbox"/> Debtor or <input type="checkbox"/> Secured Party of record.	<input type="checkbox"/> CHANGE name and/or address: Complete item 6a or 6b; and item 7a and 7b and item 7c	<input type="checkbox"/> ADD name: Complete item 7a or 7b, and item 7c	<input type="checkbox"/> DELETE name: Give record name to be deleted in item 6a or 6b
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6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

OR	6a. ORGANIZATION'S NAME			
	6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

OR	7a. ORGANIZATION'S NAME			
	7b. INDIVIDUAL'S SURNAME			
	INDIVIDUAL'S FIRST PERSONAL NAME			
	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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8. ☐ COLLATERAL CHANGE: Also check one of these four boxes: ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral
 Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
 If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

OR	a. ORGANIZATION'S NAME Plaza Bank			
	b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10. OPTIONAL FILER REFERENCE DATA:
 [168063256]

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Corporation Service Company 800-858-5294
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) CORPORATION SERVICE COMPANY 801 ADLAI STEVENSON DRIVE SPRINGFIELD, IL 62703 USA

DOCUMENT NUMBER: 52439630002

FILING NUMBER: 15-7499759612

FILING DATE: 12/16/2015 09:49

IMAGE GENERATED ELECTRONICALLY FOR XML FILING
THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor Information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	1a. ORGANIZATION'S NAME Innovation Pet, Inc.			
	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 22187 Pine Drive		CITY Cedar Park	STATE CA	POSTAL CODE 92322
			COUNTRY USA	

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor Information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	2a. ORGANIZATION'S NAME			
	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

3. **SECURED PARTY'S NAME** (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

OR	3a. ORGANIZATION'S NAME CapFlow Funding Group Managers LLC			
	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 201 Route 17 North, Suite 805		CITY Rutherford	STATE NJ	POSTAL CODE 07070
				COUNTRY USA

4. **COLLATERAL:** This financing statement covers the following collateral:

This financing statement covers all of the following, now owned or hereafter acquired property by the Debtor / Seller:

All Purchased Accounts sold by the Seller to Buyer under the Factoring and Security Agreement together with a security interest in all of the assets of the Debtor consisting of the following:

All Seller's now owned and hereafter acquired Accounts, Chattel Paper, Deposit Accounts, Inventory, Equipment, Instruments, Investments, Investment Property, Documents, Letter of Credit Rights, Commercial Tort Claims, General Intangibles, Supporting Obligations and any sums maintained by Purchaser that are identified as payable to Seller from the Reserve Account.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, Item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. **ALTERNATIVE DESIGNATION** (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. **OPTIONAL FILER REFERENCE DATA:**

[109351284]

FILING OFFICE COPY

UCC FINANCING STATEMENT ADDENDUM**FOLLOW INSTRUCTIONS**

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

OR	9a. ORGANIZATION'S NAME Innovation Pet, Inc.	
	9b. INDIVIDUAL'S SURNAME	
	FIRST PERSONAL NAME	
ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX

DOCUMENT NUMBER: 52439630002

IMAGE GENERATED ELECTRONICALLY FOR XML FILING
THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

OR	10a. ORGANIZATION'S NAME			
	10b. INDIVIDUAL'S SURNAME			
	INDIVIDUAL'S FIRST PERSONAL NAME			
	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX

10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

OR	11a. ORGANIZATION'S NAME			
	11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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12. ADDITIONAL SPACE FOR ITEM 4 (collateral):

Pursuant to an agreement, the debtor on this financing statement is contractually precluded from granting junior liens against any of its assets. The secured party reserves all rights and remedies against any and all parties who violate the secured party's rights.

13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing.

15. Name and address of RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

FILING OFFICE COPY



STATE OF CALIFORNIA
Office of the Secretary of State, Alex Padilla
**UCC FINANCING STATEMENT AMENDMENT (UCC
3)**
California Secretary of State
1500 11th Street
Sacramento, California 95814
(916) 653-3516

For Office Use Only

-FILED-

File #: U200026282834

Date Filed: 10/19/2020

Submitter Information:	
Contact Name	CORPORATION SERVICE COMPANY
Organization Name	CORPORATION SERVICE COMPANY
Phone Number	18008585294
Email Address	SPRFiling@cscglobal.com
Address	801 ADLAI STEVENSON DR SPRINGFIELD, IL 62703
Amendment Action Information:	
Initial Financing Statement File Number	157499759612
Date Filed	12/16/2015
Amendment Action	Continuation
Name of Secured Party of Record Authorizing This Amendment:	
<input type="checkbox"/> If this Amendment is authorized by a Debtor, check this box and select the name of the Authorizing Debtor below.	
Authorizing Secured Party Name	CapFlow Funding Group Managers LLC
Optional Filer Reference Information:	
Debtor:Innovation Pet, Inc. 2004 53827	

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

Gisella Melendez
800-331-3282

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

CT LIEN SOLUTIONS
2727 ALLEN PARKWAY
HOUSTON, TX 77019
USA

DOCUMENT NUMBER: 57731790002

FILING NUMBER: 16-7551592900

FILING DATE: 10/19/2016 09:09

IMAGE GENERATED ELECTRONICALLY FOR XML FILING
THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor Information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	1a. ORGANIZATION'S NAME Innovation Pet, Inc			
	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS PO Box 9751		CITY Cedarpinas Park	STATE CA	POSTAL CODE 92322
			COUNTRY USA	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor Information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	2a. ORGANIZATION'S NAME			
	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
			COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

OR	3a. ORGANIZATION'S NAME Capital 2 Thrive			
	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 1801 Broadway Ste 1350		CITY Denver	STATE CO	POSTAL CODE 80202
			COUNTRY USA	

4. COLLATERAL: This financing statement covers the following collateral:
All business assets

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

CA-0-56134778-52298753

FILING OFFICE COPY

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Gisella Melendez 800-331-3282
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) CT LIEN SOLUTIONS 2727 ALLEN PARKWAY HOUSTON, TX 77019 USA

DOCUMENT NUMBER: 57823810002
FILING NUMBER: 16-75526303
FILING DATE: 10/25/2016 13:20

**IMAGE GENERATED ELECTRONICALLY FOR XML FILING
 THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY**

1a. INITIAL FINANCING STATEMENT FILE NUMBER 16-7551592900	1b. <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Filer: <u>Attach Amendment Addendum</u> (Form UCC3Ad) <u>and</u> provide Debtor's name in item 13
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2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:
 Check one of these two boxes: **AND** Check one of these three boxes to:

This Change affects ☐ Debtor or ☐ Secured Party of record. ☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a and 7b and item 7c ☐ ADD name: Complete item 7a or 7b, and item 7c ☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

OR	6a. ORGANIZATION'S NAME			
	6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

OR	7a. ORGANIZATION'S NAME			
	7b. INDIVIDUAL'S SURNAME			
	INDIVIDUAL'S FIRST PERSONAL NAME			
	INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)			SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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8. ☒ COLLATERAL CHANGE: Also check one of these four boxes: ☐ ADD collateral ☐ DELETE collateral ☒ RESTATE covered collateral ☐ ASSIGN collateral

Indicate collateral:
 All of Client's equipment, fixtures, accounts, inventory, instruments, documents, contract rights, chattel paper, general intangibles and the proceeds thereof (including any insurance proceeds), now and hereafter owned by Client, or in which Client now or hereafter may have any rights, together with any inventory or goods owned by the secured party in the possession of Client wherever situated and whenever acquired.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
 If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

OR	a. ORGANIZATION'S NAME Capital 2 Thrive			
	b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10. OPTIONAL FILER REFERENCE DATA:
 CA-0-56218542-52326370

RECORDING REQUESTED BY
STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT DEPARTMENT
888-745-3886

WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT DEPARTMENT
LIEN GROUP, MIC 92G
PO BOX 826880
SACRAMENTO, CA 94280-0001

DOCUMENT NUMBER: 69178280002
FILE NUMBER: 187642508192
FILE DATE: 04/09/2018 18:15
IMAGE GENERATED ELECTRONICALLY FOR XML FILING

NOTICE OF STATE TAX LIEN

(Filed pursuant to Section 7171 of the Government Code)

INNOVATION PET, INC.
17011 BEACH BLVD
STE 900
HUNTINGTON BEACH CA 92647-5998

Secretary of State

Letter ID. L0051354272

Certificate No. G002029437

TAX PERIOD	TAX	PENALTY	INTEREST	TOTAL
01/01/2017 to 03/31/2017	\$0.00	\$1,143.36	\$108.45	\$1,251.81

Interest calculated through 04/06/2018

The Director of the Employment Development Department hereby certifies the above is liable to the State of California for amounts due and required to be paid as determined under the provisions of the California Unemployment Insurance Code, the Revenue and Taxation Code, or both.

THE AMOUNT OF DELINQUENCY ABOVE SET FORTH SHALL BE A LIEN UPON ALL REAL OR PERSONAL PROPERTY AND RIGHTS TO SUCH PROPERTY, INCLUDING ALL AFTER-ACQUIRED PROPERTY AND RIGHTS TO PROPERTY BELONGING TO THE ABOVE NAMED.

Date: **04/06/2018**
At Sacramento, California



The Director of the Employment Development Department has complied with all provisions of the California Unemployment Insurance Code in the computation and levy of the amount assessed and has caused this notice of lien to be issued by a duly authorized representative.

Teresa Gage

By _____
Authorized Representative

This agency has adopted the use of a facsimile signature as affixed above.

WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
Employment Development Department
LIEN GROUP, MIC 92G
PO BOX 826880
SACRAMENTO, CA 94280-0001

DOCUMENT NUMBER: 70423270002
FILE NUMBER: 1876511117
FILE DATE: 05/30/2018 15:24
IMAGE GENERATED ELECTRONICALLY FOR XML FILING

**RELEASE OF LIEN
IMPOSED UNDER A CERTIFICATE OR NOTICE OF STATE TAX LIEN**

CERTIFICATE NO. G002029437

LETTER ID. L1907662240

The Director of the Employment Development Department of the State of California hereby releases and certifies that there has been released all property from any lien imposed thereon by the filing and recording of that certain Certificate or Notice of Amount of tax, penalty, and interest due under Section 1703 of the California Unemployment Insurance Code or Section 7171 of the Government Code from:

INNOVATION PET, INC.

In the amount of \$1,251.81 which was recorded on 04/09/2018
in volume/page 187642508192 of Official Records of the Secretary of State



THE DIRECTOR OF THE EMPLOYMENT
DEVELOPMENT DEPARTMENT OF THE
STATE OF CALIFORNIA HAS CAUSED
THIS RELEASE TO BE ISSUED BY THE
DULY AUTHORIZED REPRESENTATIVE.

Date: 05/29/2018

This document is produced on a laser printer.

Teresa Gage

By

Authorized Representative

This agency has adopted the use of a
facsimile signature as affixed above.

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Lien Solutions 800-331-3282
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Lien Solutions P.O. Box 29071 Glendale, CA 91209-9071 USA

DOCUMENT NUMBER: 81116210002
FILING NUMBER: 19-7729283139
FILING DATE: 08/22/2019 10:10

**IMAGE GENERATED ELECTRONICALLY FOR XML FILING
THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY**

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); If any part of the Individual Debtor's name will not fit in line 1b, leave all of Item 1 blank, check here ☐ and provide the Individual Debtor Information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	1a. ORGANIZATION'S NAME INNOVATION PET, INC.				
	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c. MAILING ADDRESS 17011 Beach Blvd, Suite 900		CITY Huntington Beach	STATE CA	POSTAL CODE 92647	COUNTRY USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); If any part of the Individual Debtor's name will not fit in line 2b, leave all of Item 2 blank, check here ☐ and provide the Individual Debtor Information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	2a. ORGANIZATION'S NAME				
	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

OR	3a. ORGANIZATION'S NAME PMW LLC				
	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c. MAILING ADDRESS 3575 Ringsby Court, Unit 411		CITY Denver	STATE CO	POSTAL CODE 80216	COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether presently existing or hereafter created or acquired, and wherever located, including but not limited to (i) all of Debtor's accounts, accounts receivable, contract receivables, contract rights, notes, drafts, acceptances, instruments, chattel paper and general intangibles, and all guarantees and suretyship agreements relating thereto and all security for payment thereof, now and hereafter existing or arising (ii) all of the Debtor's inventory, including all goods, merchandise, raw materials, supplies and other tangible personal property, now owned or hereafter acquired, and all documents now and at any times covering or representing any of said property; Debtor has agreed not to sell, factor or otherwise finance its accounts and to not grant any other security interest in its accounts or inventory. Public notice of this agreement is hereby given. (all of which is hereafter called the "Collateral").

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, Item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

CA-0-71353912-57636721

FILING OFFICE COPY

Recording Requested By Internal Revenue
Service. When recorded mail to:

INTERNAL REVENUE SERVICE
PO BOX 145595, STOP 8420G
CINCINNATI, OH 45250-5585

19-7752901475

12/17/2019 17:00



SOS

FILED

CALIFORNIA
SECRETARY OF STATE



84632350012

UCC 1 FILING

For Optional Use by Recording Office

Form 668 (Y)(c)

(Rev. February 2004)

1748 Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area: SMALL BUSINESS/SELF EMPLOYED AREA #7

Serial Number

Lien Unit Phone: (800) 913-6050

395958819

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer INNOVATION PET INC, a Corporation

Residence 17011 BEACH BLVD STE 900
HUNTINGTN BCH, CA 92647-5998

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
941	03/31/2017	XX-XXX8015	07/10/2017	08/09/2027	
941	03/31/2017	XX-XXX8015	06/10/2019	07/10/2029	13170.77
941	09/30/2017	XX-XXX8015	04/01/2019	05/01/2029	5924.05
941	12/31/2017	XX-XXX8015	05/27/2019	06/26/2029	8777.95

Place of Filing

SECRETARY OF STATE
CALIFORNIA
SACRAMENTO, CA 94235

Total \$ 27872.77

This notice was prepared and signed at OAKLAND, CA, on this, the 03rd day of December, 2019.

Signature

for M. HERRERA

Title
REVENUE OFFICER
(562) 491-7704

27-06-4720

RECORDING REQUESTED BY
STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT DEPARTMENT
1-888-745-3886

WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT DEPARTMENT
LIEN GROUP, MIC 92G
PO BOX 826880
SACRAMENTO, CA 94280-0001

DOCUMENT NUMBER: 87662570002
FILE NUMBER: 207771286444
FILE DATE: 04/02/2020 15:26
IMAGE GENERATED ELECTRONICALLY FOR XML FILING

NOTICE OF STATE TAX LIEN

(Filed pursuant to Section 7171 of the Government Code)

INNOVATION PET, INC.
17011 BEACH BLVD
STE 900
HUNTINGTON BEACH CA 92647-5998

Secretary of State

Letter ID. L0340843232

Certificate No. G002418837

TAX PERIOD	TAX	PENALTY	INTEREST	TOTAL
01/01/2019 to 03/31/2019	\$4,104.57	\$1,939.07	\$289.54	\$6,333.18

Interest calculated through 04/02/2020

The Director of the Employment Development Department hereby certifies the above is liable to the State of California for amounts due and required to be paid as determined under the provisions of the California Unemployment Insurance Code, the Revenue and Taxation Code, or both.

THE AMOUNT OF DELINQUENCY ABOVE SET FORTH SHALL BE A LIEN UPON ALL REAL OR PERSONAL PROPERTY AND RIGHTS TO SUCH PROPERTY, INCLUDING ALL AFTER-ACQUIRED PROPERTY AND RIGHTS TO PROPERTY BELONGING TO THE ABOVE NAMED.

Date: **04/02/2020**
At Sacramento, California



The Director of the Employment Development Department has complied with all provisions of the California Unemployment Insurance Code in the computation and levy of the amount assessed and has caused this notice of lien to be issued by a duly authorized representative.

By *C Dumanska*
Authorized Representative

This agency has adopted the use of a facsimile signature as affixed above.

Employment Development Department
1-888-745-3886

WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
Employment Development Department
LIEN GROUP, MIC 92G
PO BOX 826880
SACRAMENTO, CA 94280-0001

For Office Use Only

-FILED-

File #: U200026483436

Date Filed: 10/20/2020

**RELEASE OF LIEN
IMPOSED UNDER A CERTIFICATE OR NOTICE OF STATE TAX LIEN**

CERTIFICATE NO. G002418837

LETTER ID. L0353753568

The Director of the Employment Development Department of the State of California hereby releases and certifies that there has been released all property from any lien imposed thereon by the filing and recording of that certain Certificate or Notice of Amount of tax, penalty, and interest due under Section 1703 of the California Unemployment Insurance Code or Section 7171 of the Government Code from:

INNOVATION PET, INC.

In the amount of \$6,333.18
in volume/page 207771286444

which was recorded on 04/02/2020
of Official Records of the Secretary of State



THE DIRECTOR OF THE EMPLOYMENT
DEVELOPMENT DEPARTMENT OF THE
STATE OF CALIFORNIA HAS CAUSED
THIS RELEASE TO BE ISSUED BY THE
DULY AUTHORIZED REPRESENTATIVE.

Date: 10/20/2020

This document is produced on a laser printer.

By *C Dumanska*

Authorized Representative

This agency has adopted the use of a
facsimile signature as affixed above.

STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT DEPARTMENT
1-888-745-3886

WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT DEPARTMENT
LIEN GROUP, MIC 92G
PO BOX 826880
SACRAMENTO, CA 94280-0001

DOCUMENT NUMBER: 89637540002
FILE NUMBER: 207784399110
FILE DATE: 06/02/2020 15:38
IMAGE GENERATED ELECTRONICALLY FOR XML FILING

NOTICE OF STATE TAX LIEN

(Filed pursuant to Section 7171 of the Government Code)

INNOVATION PET, INC.

PO BOX 9251
CEDARPINES PARK CA 92322-9251

Secretary of State

Letter ID. L1841542880

Certificate No. G002431563

TAX PERIOD	TAX	PENALTY	INTEREST	TOTAL
04/01/2019 to 06/30/2019	\$3,173.15	\$1,509.91	\$197.96	\$4,881.02

Interest calculated through 06/01/2020

The Director of the Employment Development Department hereby certifies the above is liable to the State of California for amounts due and required to be paid as determined under the provisions of the California Unemployment Insurance Code, the Revenue and Taxation Code, or both.

THE AMOUNT OF DELINQUENCY ABOVE SET FORTH SHALL BE A LIEN UPON ALL REAL OR PERSONAL PROPERTY AND RIGHTS TO SUCH PROPERTY, INCLUDING ALL AFTER-ACQUIRED PROPERTY AND RIGHTS TO PROPERTY BELONGING TO THE ABOVE NAMED.

Date: **06/01/2020**

At Sacramento, California



The Director of the Employment Development Department has complied with all provisions of the California Unemployment Insurance Code in the computation and levy of the amount assessed and has caused this notice of lien to be issued by a duly authorized representative.

By

Authorized Representative

This agency has adopted the use of a facsimile signature as affixed above.

Employment Development Department
1-888-745-3886

WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
Employment Development Department
LIEN GROUP, MIC 92G
PO BOX 826880
SACRAMENTO, CA 94280-0001

For Office Use Only

-FILED-

File #: U200026475127

Date Filed: 10/20/2020

**RELEASE OF LIEN
IMPOSED UNDER A CERTIFICATE OR NOTICE OF STATE TAX LIEN**

CERTIFICATE NO. G002431563

LETTER ID. L1634195936

The Director of the Employment Development Department of the State of California hereby releases and certifies that there has been released all property from any lien imposed thereon by the filing and recording of that certain Certificate or Notice of Amount of tax, penalty, and interest due under Section 1703 of the California Unemployment Insurance Code or Section 7171 of the Government Code from:

INNOVATION PET, INC.

In the amount of \$4,881.02 which was recorded on 06/02/2020
in volume/page 207784399110 of Official Records of the Secretary of State



THE DIRECTOR OF THE EMPLOYMENT
DEVELOPMENT DEPARTMENT OF THE
STATE OF CALIFORNIA HAS CAUSED
THIS RELEASE TO BE ISSUED BY THE
DULY AUTHORIZED REPRESENTATIVE.

Date: 10/20/2020

This document is produced on a laser printer.

By

A handwritten signature in black ink, appearing to read 'O. Dumanska'.

Authorized Representative

This agency has adopted the use of a
facsimile signature as affixed above.

EXHIBIT 4

INTERCREDITOR AGREEMENT

FIRST NEW FUNDER: CapFlow Funding Group Managers LLC

ADDRESS: 201 Route 17, Suite 805, Rutherford, NJ 07070

SECOND NEW FUNDER: PMW, LLC

ADDRESS: 3575 Ringsby Court, Unit 411, Denver, CO 80216

CREDITOR: Pacific Premier Bank

**ADDRESS: 17901 Von Karman Avenue, Suite 1200
Irvine, CA 92614**

BORROWER: Innovation Pet, Inc.

ADDRESS: PO Box 9251, Cedarpines Park, CA 92322

RECITALS:

- A. Borrower, Creditor and First New Funder are parties to a certain Intercreditor Agreement dated November 10, 2016, attached hereto as Exhibit A. Additionally, Borrower, First New Funder, and Second New Funder are parties to a certain Intercreditor Agreement dated August 21, 2019, attached hereto as Exhibit B. For purposes herein, Second New Funder agrees to be bound by the terms and conditions herein as it related to First New Funder & Creditor. Notwithstanding the above, Creditor is not a party to this Agreement and is not bound by this Agreement. It is the intent of both First New Funder and Second New Funder that the terms and conditions contained in this Agreement shall control their relationship as it relates between First New Funder, Second New Funder and Creditor. Creditor however is under no obligation to honor any of the terms and conditions between Creditor and Second New Funder.
- B. Borrower is indebted and may hereafter become indebted to Creditor, which indebtedness is secured by a first security interest in certain collateral (the "Creditor Collateral," as hereinafter defined), together with the proceeds thereof as reflected in certain UCC filings dated April 17, 2014 and January 30, 2015.
- C. Borrower is desirous of continuing to obtain from First New Funder (1) purchase order financing for the specific funding of goods to fulfill commercial customer purchase orders, and (2) factor financing of accounts (together "First New Funder Purchase Order Funding"), to be secured by a first security interest in certain First New Funder Collateral, as that term is defined in paragraph 1 below. Further, Borrower is desirous of obtaining from Second New Funder purchaser order financing in connection for the filling of certain purchase orders for a customer known as Tractor Supply Company, True Value Company, and Rural King Distribution (the customers are "Tractor

Supply, True Value, and Rural King” and the financing is the “Second New Funder Purchase Order Funding”). A list of specific Tractor Supply, True Value, and Rural King purchase orders that are subject to this Agreement shall be maintained by Second New Funder and provided to First New Funder upon financing provided by Second New Funder in the form of a summary schedule while this Agreement is in force.

- D. First New Funder is willing to make such First New Funder Purchase Order Funding available to Borrower, provided that, among other conditions, First New Funder be granted a first security interest in the First New Funder Collateral (as hereinafter defined) of Borrower, which security interest is prior and superior to any security interest of Creditor and/or Second New Funder in the First New Funder Collateral. Further, Second New Funder is willing to make Second New Funder Purchaser Ordering Funding for Tractor Supply, True Value, and Rural King Purchase Orders available to Borrower, provided that, among other conditions, Second New Funder be granted a first security interest in the Tractor Supply, True Value, and Rural King Purchase Order Collateral (as hereinafter defined) of Borrower, which is prior and superior to any security interest of First New Funder in the Tractor Supply, True Value, and Rural King Purchase Order Collateral.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual covenant herein contained and for the other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the execution thereof, First New Funder, Second New Funder, and Borrower (collectively, the “Parties” and individually, a “Party”) do hereby agree as follows:

1. Definitions.

As used in this Intercreditor Agreement (this “Agreement”), the following words and terms shall have the meaning set forth below and, unless defined herein, shall have the meaning set forth in the Uniform Commercial Code as amended from time to time.

- (a) “First New Funder Collateral” means all the Borrower’s accounts, contract rights, returns goods and rights to replevin, customer purchase orders, chattel paper (including notes and security agreements), all guarantees thereof, all First New Funder Inventory (as defined herein), proceeds and insurance proceeds, covering same, which are related specifically to funds provided by First New Funder to finance the First New Funder Purchase Order Funding provided by First New Funder to Borrower, now existing or hereafter existing, and all books and records related thereto. For the purposes of this Agreement, “First New Funder Inventory” shall mean:

- (i) All inventory and other goods now owned or after-acquired by Borrower, which relate to the First New Funder Purchase Order Funding and, whether standing alone or incorporated into any of the following, are: (A) held for sale or lease; (B) to be furnished under service contracts; (C) raw materials; (D) work in progress; or (E) materials used or consumed in Borrower's business.; and
 - (ii) Documents of title evidencing or representing First New Funder Inventory now owned or after-acquired by Borrower;
 - (iii) All proceeds and products of the First New Funder Inventory (including insurance proceeds); and
 - (iv) Notwithstanding the above, "First New Funder Inventory" shall expressly exclude the Tractor Supply, True Value, and Rural King Purchase Order Collateral except as provided herein.
- (b) "Tractor Supply, True Value, and Rural King Purchase Order Collateral" shall mean all the accounts, contract rights, purchase orders, returns, goods, inventory, proceeds and insurance proceeds covering same which are related specifically to funds provided by Second New Funder for the Tractor Supply, True Value, and Rural King Purchase Orders. The goods ordered under the Tractor Supply, True Value, and Rural King Purchase Orders are referred to herein as the "Second New Funder Inventory").
- (c) "Creditor Collateral" means all property of Borrower in which Creditor has a security interest, other than the First New Funder Collateral and Tractor Supply, True Value, and Rural King Purchase Order Collateral.
- (d) "First New Funder Loan Documents" mean all documents and instruments, which have or may be executed by Borrower and others in connection with the First New Funder Purchase Order Funding granted to Borrower, including all modifications, extensions and revisions thereof.
- (e) "Second New Funder Loan Documents" mean all documents and instruments, which have or may be executed by Borrower and others in connection with the Tractor Supply, True Value, and Rural King Purchase Order Funding granted to Borrower, including all modifications, extensions and revisions thereof.
- (f) "New Funder Indebtedness" means all principal, interest, any and all advances, debts, obligations and liabilities of Borrower to First New Funder or Second New Funder now and hereafter voluntary or involuntarily arising, whether or not due, whether or not determined as to amount, secured or unsecured and regardless of whether the Borrower may be liable individually or jointly with others or pursuant to a guaranty, and any and all renewals, modifications or extensions thereof in a principal amount plus all interest and default interest thereon, howsoever and whenever acquired by First New Funder or

Second New Funder and all costs and expenses of collection of the same, including but not limited to reasonable attorneys' fees relating to any of the foregoing. "First New Funder Indebtedness" shall be the New Funder Indebtedness owed to First New Funder. "Second New Funder Indebtedness" shall be the New Funder Indebtedness owed to Second New Funder.

2. Priority.

Subject to the terms and conditions of this Agreement, the parties hereby agree:

- (a) The security interest of First New Funder in the First New Funder Collateral shall be prior and superior to any security interest of Creditor or Second New Funder in the First New Funder Collateral and the Creditor's and Second New Funder's security interest in the First New Funder Collateral is hereby subordinated and shall be junior and inferior to the security interest of First New Funder in the First New Funder Collateral to the extent of the First New Funder Indebtedness from Borrower;
- (b) The security interest of Second New Funder in the Tractor Supply, True Value, and Rural King Purchase Order Collateral shall be prior and superior to any security interest of First New Funder in the Tractor Supply, True Value, and Rural King Purchase Order. Second New Funder's Security Interest in the Creditor Collateral and the First New Funder Collateral is hereby subordinated and shall be junior to the security interest of Creditor in the Creditor Collateral, and First New Funder in the First New Funder Collateral.
- (c) If First New Funder purchases an account receivable arising out of the sale of Tractor Supply, True Value, or Rural King Purchase Order Collateral ("Tractor Supply, True Value, or Rural King Account") and pays Second New Funder the amount agreed to by First New Funder and Second New Funder for such Tractor Supply, True Value, or Rural King Account, Second New Funder's security interest in such Tractor Supply, True Value, or Rural King Account shall be terminated and such Tractor Supply, True Value, or Rural King Account shall become a part of the First New Funder Collateral.
- (d) The security interest of Creditor in the Creditor Collateral shall be prior and superior to any security interest of First New Funder or Second New Funder in the Creditor Collateral, and First New Funder's and Second New Funder's Security Interest in the Creditor Collateral is hereby subordinated and shall be junior and inferior to the security interest of Creditor in the Creditor Collateral;
- (e) In furtherance of the foregoing, each Party to this Agreement shall execute and deliver any instrument or document reasonably requested and prepared from time to time by the other Party to confirm the foregoing subordinations.

- (f) Creditor has granted and Second New Funder further grants to First New Funder the right to file, or refile, as the case may be, Financing Statement(s) (UCC 1/UCC3) in order to properly evidence the first priority of First New Funder's security interest in the First New Funder Collateral securing First New Funder's financing of the Purchase Order Funding.
- (g) First New Funder grants Second New Funder the right to file a Financing Statement(s) (UCC1/UCC3) in order to properly evidence the first priority of Second New Funder's security interest in the Tractor Supply, True Value, or Rural King Purchase Order Collateral securing Second New Funder's financing of the Second New Funder Purchase Order Funding.
- (h) As further inducement for First New Funder to provide the First New Funder Purchase Order Funding to Borrower and for Second New Funder to provide the Second New Funder Purchase Order Funding to Borrower, Creditor has forbore and agrees it will not take any action whatsoever that would affect the delivery of any First New Funder Inventory funded by First New Funder, respectively, nor will Creditor take any action whatsoever to collect payments otherwise due on Borrower's account with respect to sales of the First New Funder Inventory to customers of Borrower or otherwise due with respect to payments due First New Funder for such First New Funder Inventory until First New Funder is indefeasibly paid First New Funder's Indebtedness in full.

3. Forbearance by Creditor and Second New Funder.

Until all First New Funder Indebtedness has been fully paid and satisfied, Creditor has agreed it shall take no action and Second New Funder shall take no action, without the prior written consent of First New Funder, to enforce its subordinated security interest, if any, in the First New Funder Collateral, including but not limited to notifying the account debtors of Creditor's security interest in the First New Funder Collateral, or attempting to collect or realize upon the First New Funder Collateral, or foreclosing its security interest in the First New Funder Collateral, with any proceeds, if any, received by Creditor and/or Second New Funder from any such actions involving the First New Funder Collateral to be held in trust by Creditor and Second New Funder as the property of First New Funder, and Creditor and Second New Funder shall promptly deliver the same to First New Funder in the same form as received. Notwithstanding the foregoing, nothing herein contained shall be construed to inhibit or limit in any way Creditor's rights with respect to the enforcement of its security interest in Creditor Collateral and Second New Funder's rights with respect to the enforcement of its security interest in the Tractor Supply, True Value, and Rural King Purchase Order Collateral.

4. Forbearance by Creditor and First New Funder.

Until all Second New Funder Indebtedness has been fully paid and satisfied, First New Funder shall take no action, without the prior written consent of Second New Funder, to enforce its subordinated security interest in the Tractor Supply, True Value, and Rural King Purchase Order Collateral, or attempting to collect or realize upon the Tractor Supply, True Value, and Rural King Purchase Order Collateral, or foreclosing its security interest in the Tractor Supply, True Value, and Rural King Purchase Order Collateral, with any proceeds received by Second New Funder from any such actions involving the Tractor Supply, True Value, and Rural King Purchase Order Collateral to be held in trust by First New Funder as the property of Second New Funder, and First New Funder shall promptly deliver the same to Second New Funder in the same form as received. Notwithstanding the foregoing, nothing herein contained shall be construed to inhibit or limit in any way First New Funder's rights with respect to the enforcement of its security interest in the First New Funder Collateral. The foregoing notwithstanding, First New Funder and Second New Funder may agree between themselves as to priority as between them and collection matters relating to the Tractor Supply, True Value, and Rural King Purchase Order Collateral.

5. Enforcement of First New Funder's Security Interest.

First New Funder may at any time exercise all rights and remedies as granted to it by law and/or in New Funder's Loan Documents with respect to the First New Funder Collateral, without the consent of Creditor or Second New Funder. In this regard, First New Funder shall account to Second New Funder for any surplus received from a liquidation or disposition of the New Funder Collateral in excess of the First New Funder Indebtedness due from Borrower to First New Funder. In liquidation or disposing of the First New Funder Collateral, First New Funder need only use its reasonable business judgment with respect thereto and shall not be liable to Creditor or Second New Funder for any act or omission with respect to the liquidation of the First New Funder Collateral or the fact that the proceeds realized from the liquidation of the First New Funder Collateral could, under any circumstances, have been greater, excluding any liability arising out of any sale which is not commercially reasonable.

6. Enforcement of Second New Funder's Security Interest.

Second New Funder may at any time exercise all rights and remedies as granted to it by law and/or in Second New Funder's Loan Documents with respect to the Tractor Supply, True Value, and Rural King Purchase Order Collateral, without the consent First New Funder. In this regard, Second New Funder shall account to First New Funder for any surplus received from a liquidation or disposition of the Tractor Supply, True Value, and Rural King Purchase Order Collateral in

excess of the Second New Funder Indebtedness due from Borrower to Second New Funder. In liquidation or disposing of the Tractor Supply, True Value, and Rural King Purchase Order Collateral, Second New Funder need only use its reasonable business judgment with respect thereto and shall not be liable to First New Funder for any act or omission with respect to the liquidation of the Tractor Supply, True Value, and Rural King Purchase Order Collateral or the fact that the proceeds realized from the liquidation of the Tractor Supply, True Value, and Rural King Purchase Order Collateral could, under any circumstances, have been greater, excluding any liability arising out of any sale which is not commercially reasonable.

7. Maximum Amount of Second New Funder Indebtedness.

Second New Funder agrees that Second New Funder shall not without notice to and the prior written consent of First New Funder, which may be withheld in its absolute discretion, provide financing to Borrower in excess of \$1,500,000 provided, however, Second New Funder may provide additional funding in excess of such limit, as is absolutely required on an ad hoc basis only where Second New Funder shall have funded a specific Tractor Supply, True Value, or Rural King Purchase Order and (1) funds from the First New Funder to purchase the related Tractor Supply, True Value, or Rural King Account are required in order to release the subject Second New Funder Inventory for shipment to Tractor Supply, True Value, or Rural King and (2) First New Funder in its sole discretion declines to purchase the related Tractor Supply, True Value, or Rural King Account. In that event only, Second New Funder may provide the requisite additional funding, which additional funding shall be part of the Second New Funder Purchase Order Funding and secured by the Second New Funder Collateral.

8. Continuing Agreement.

Both First New Funder and Second New Funder may modify, extend, or amend their loan documents now and hereafter executed between Borrower and First New Funder and/or Second New Funder, including, without limitation, decrease or increase \ from time to time the principal amount of the indebtedness (set forth above), release its security interest in any of the First New Funder Collateral/Tractor Supply, True Value, and Rural King Collateral (as the case may be) or extend the time for the payment of any First New Funder or Second New Funder Indebtedness without effecting or impairing the rights of New Funder or Second New Funder under this Agreement; provided, however, that nothing contained in this paragraph 9 shall affect, impact or impair Creditor's priority interest in the Creditor Collateral, and nothing contained herein shall prevent or prohibit any action by Creditor against Borrower in the event such amended terms cause Borrower to violate any of its loan covenants to Creditor or otherwise default in its obligations to Creditor.

9. Benefit of Agreement.

This Agreement shall be binding upon and inure to the benefit of Creditor, First New Funder, Second New Funder and each of their respective successors and assigns.

10. Governing Law.

This Agreement shall be governed by the internal laws of the State of New Jersey without regard to principles of conflict of laws. In any litigation or arbitration in which the Creditor is not a party, each of the Parties submit to the jurisdiction of any state or federal court sitting in the County of Bergen, State of New Jersey in any action or proceeding arising out of or relating directly or indirectly to this Agreement and agrees that all claims in respect of the action or proceeding shall be heard and determined in any such court. In such case, each of the Parties further agree to waive any right such Party may have to seek a change of venue based on inconvenience of the forum or otherwise. Nothing herein limits the right of Second New Funder to proceed against Borrower or any third party with respect to the Second New Funder Funding or Indebtedness in the state and forum of its choice if First New Funder is not a party to such action, provided that First New Funder is not at any time named a party to such action by any party thereto, and/or is not required to appear or participate at trial, motions or discovery, upon the occurrence of which the Second New Funder shall dismiss the said action and refile in New Jersey pursuant to the terms set forth above and further that Second New Funder expressly consents that this document may be admitted in any said court and shall be deemed conclusive as to jurisdiction and this provision.

11. Attorney's Fees.

In the event of any litigation between the Parties arising out of this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including attorney's fees, which cost and expenses shall be set by the court sitting without a jury.

12. Amendments.

This Agreement may be amended or modified only by a writing executed by First New Funder and Second New Funder.

13. Counterparts.

This Agreement may be executed in any number of separate counterparts, all of which taken together shall constitute one and the same instrument.

14. Headings/Recitals.

Section headings in this Agreement are for convenience and reference only and shall not govern the interpretations of any of the provisions of this Agreement. Recitals shall be considered to be a substantive part of this Agreement.

13 Waiver of Jury Trial/Judicial Reference/Arbitration.

13.1 Jury Trial Waiver.

13.1.1 To the fullest extent permitted by applicable law, the Parties each hereby irrevocably and expressly waive all rights to a trial by jury in any action, proceeding, or cross-complaint (whether based upon contract, tort, or otherwise) arising out of or relating to this Agreement, the obligations or any of the transactions contemplated hereby or thereby or the Parties' actions in the negotiation, administration, or enforcement hereof or thereof. Each Party acknowledges that such waiver is made with full knowledge and understanding of the nature of the rights and benefits waived hereby, and with the benefit of advice of counsel of its choosing.

14. Borrower represents and warrants that no event of default (as defined in the Creditor agreement by and between Borrower and Creditor "Creditor Agreement") has occurred or is continuing under the Creditor Agreement as of the date of this Agreement.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 12th day of November, 2019.

FIRST NEW FUNDER:

CapFlow Funding Group Managers LLC

By: 

Name: Andrew Coon

Its: CEO

SECOND NEW FUNDER:

PMW, LLC

By: 

Name: Dennis O'Carroll

Its: CEO

BORROWER:

Innovation Pet, Inc.

By: 

Name: Victoria Coopman

Its: CEO



Audit Trail

TITLE	Cap Flow PMW Innovation Pet Intercreditor Updated for...
FILE NAME	Intercreditor PMW...low Executed).pdf
DOCUMENT ID	24667bdfe0f6e05b5221b1e99d5eb6527ecc9bfc
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History







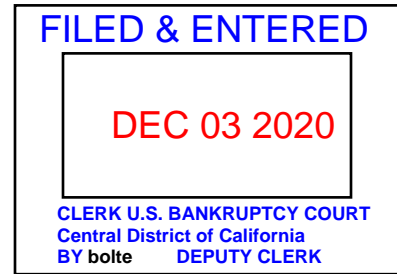
 SENT	11 / 19 / 2019 23:46:51 UTC	Sent for signature to Dennis O'Carroll (docarroll@pmw.llc) and Victoria Coopman (victoria@innovationpet.com) from jeff@suite420solutions.com IP: 50.227.148.194
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 SIGNED	11 / 20 / 2019 10:33:10 UTC	Signed by Victoria Coopman (victoria@innovationpet.com) IP: 92.38.148.46
 VIEWED	11 / 20 / 2019 22:26:37 UTC	Viewed by Dennis O'Carroll (docarroll@pmw.llc) IP: 50.227.148.194
 SIGNED	11 / 20 / 2019 22:26:53 UTC	Signed by Dennis O'Carroll (docarroll@pmw.llc) IP: 50.227.148.194
 COMPLETED	11 / 20 / 2019 22:26:53 UTC	The document has been completed.

EXHIBIT 5

James C. Bastian, Jr. - Bar No. 175415
Melissa Davis Lowe - Bar No. 245521
Sarah M. St. John - Bar No. 329335
SHULMAN BASTIAN FRIEDMAN & BUI LLP
100 Spectrum Center Drive, Suite 600
Irvine, California 92618
Telephone: (949) 340-3400
Facsimile: (949) 340-3000
Email: JBastian@shulmanbastian.com
MLowe@shulmanbastian.com
SStjohn@shulmanbastian.com



Proposed Attorneys for Innovation Pet, Inc., a California corporation,
Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

In re

INNOVATION PET, INC., a
California corporation,

Debtor.

Case No. 8:20-bk-13223-SC

CHAPTER 11

AMENDED ORDER:

**(1) APPROVING PROCEDURES IN
CONNECTION WITH THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR'S
ASSETS;**

**(2) SCHEDULING A HEARING ON A
SEPARATE MOTION TO APPROVE THE
SALE OF ASSETS; AND**

(3) GRANTING RELATED RELIEF

(Original order entered on December 2, 2020)

Hearing Date:

Date: November 24, 2020

Time: 10:00 a.m.

Place: Courtroom 5C

United State Bankruptcy Court

411 West Fourth Street

Santa Ana, CA 92701

The Motion for Order: (1) Approving Procedures in Connection With the Sale of
Substantially All of the Debtor's Assets; (2) Scheduling a Hearing on a Separate Motion to Approve

1 the Sale of Assets; and (3) Granting Related Relief (“Sale Procedures Motion”) (docket 8) filed by
2 Innovation Pet, Inc., the chapter 11 debtor and debtor in possession (“Debtor”) came on for hearing
3 on November 24, 2020, the Honorable Scott C. Clarkson, United States Bankruptcy Judge presiding.

4 The Debtor appeared through James C. Bastian, Jr., Melissa Davis Lowe, and Sarah St. John
5 of Shulman Bastian Friedman & Bui LLP. Other parties appeared as reflected on the Court’s record.

6 The Court, having considered the Sale Procedures Motion, the supporting First Day
7 Declaration of Victoria Coopman and the Supplemental First Day Declaration of Victoria Coopman
8 (collectively, the “Coopman Declaration”), arguments and representations of counsel, and the record
9 in this case; the Court having found that proper notice has been given; and it appearing that the relief
10 requested by the Sale Procedures Motion is in the best interests of the Estate and its creditors; and
11 good cause having been shown, it is ORDERED as follows:

12 1. The Sale Procedures Motion is granted.

13 2. The hearing on the Debtor’s motion (to be filed) for approval of the sale (“Sale
14 Motion”) of the Estate’s right, title and interest in all of Debtor’s inventory, furniture, fixtures,
15 equipment, machinery, furnishings, intellectual property rights, licenses and all other assets
16 necessary to and part of the Debtor’s business as set forth in the Asset Purchase Agreement
17 (“Purchased Assets”) shall be held on January 7, 2021 at 1:30 p.m., in Courtroom 5C of the
18 Bankruptcy Court located at 411 West Fourth Street, Santa Ana, California 92701. The hearing will
19 be held via Zoom.gov with instructions to be provided within twenty-four (24) hours of the hearing
20 date.

21 3. The following Bidding Procedures will apply to the sale:

22 a. Participation Requirements: In order to participate in the bidding process or
23 otherwise be considered for any purpose under the Bidding Procedures, a person interested in the
24 Purchased Assets must submit an offer (each, a “Bid”), and each party submitting a Bid (each, a
“Bidder”) must satisfy the conditions set forth below:

25 i. Good Faith Deposit: A Bid must be accompanied by a deposit in the
amount of 10% of the proposed purchase price (the “Good Faith Deposit”).

26 ii. Documentation: A Bid must include an intent to purchase the
27 Purchased Assets in writing in substantially the same form as the APA.
28

1 iii. Fees and Expense Reimbursements: No Bidder shall be entitled to
2 any expense reimbursement, breakup fee, termination fee, or similar fee or payment, other than the
Break-up Fee to the Stalking Horse Bidder if it is not the successful bidder.

3 iv. Corporate Authority: A Bid must include written evidence that
4 demonstrates appropriate corporate authorization for the Bidder to consummate the proposed sale;
5 provided, that if the Bidder is an entity specially formed for the purpose of effecting the sale, then
the Bidder must furnish written evidence of the approval of the sale by the equity holder(s) of such
Bidder.

6 v. No Collusion: A Bidder must confirm that it has not engaged in any
7 collusion with respect to the bidding or the sale.

8 vi. Disclosure: A Bid must fully disclose the identity of each entity that
9 will be bidding for the assets or otherwise participating in connection with such Bid, and the
complete terms of any such participation.

10 vii. Proof of Financial Ability to Perform: A Bid must include written
evidence that the Bidder has the necessary financial ability to close the sale.

11 viii. Contingencies: A Bid may not be conditioned on the outcome or
12 review of due diligence, but may be subject to the accuracy in all material respects at the closing of
specified representations and warranties.

13 ix. Irrevocable: A Bid must be irrevocable through the Auction and, if
14 such Bid is accepted as the Successful Bid or the Backup Bid (as defined below), must continue to
remain irrevocable, subject to the terms and conditions of the Bidding Procedures.

15 b. Bid Deadline: Regardless of when a party qualifies as a Preliminarily
16 Interested Party, all Bids must be in writing and received by counsel to the Debtor on or before
12:00 noon (California time) on December 30, 2020 (the "Bid Deadline").

17 c. Qualified Bids. Bids received from Bidders before the Bid Deadline that are
18 determined by the Debtor to meet the above requirements shall constitute "Qualified Bids," and such
Bidders shall constitute "Qualified Bidders." The Debtor will advise the potential bidder whether
19 or not the Bidder is a Qualified Bidder. Only Qualified Bidders may participate at the Auction.

20 d. Bid Assessment Criteria. If more than one Qualified Bid is received by the
21 Bid Deadline, the Debtor will conduct an Auction to determine the highest or otherwise best
Qualified Bid. The Debtor, in consultation with the Subchapter V Trustee, will determine the
22 highest or otherwise best Qualified Bid in their business judgment, after taking into account any
factors the Debtor and Trustee deem relevant.

23 e. Overbidding. If more than one Qualified Bid is received by the Bid Deadline,
24 the Debtor will conduct an Auction (or overbidding) to determine the highest or otherwise best
Qualified Bid. The Auction shall take place concurrent with the hearing on the Sale Motion to be
25 set for January 7, 2021 at 1:30 p.m. (California time) ("Sale Hearing") at the United States
Bankruptcy Court, Courtroom 5C, located at 411 W. 4th Street, Santa Ana, California 92701.

26 f. Overbidding Rules. The minimum increment for overbids is \$25,000.

27 g. Amount of Bid. Each Bid must clearly show the amount of the purchase price.
28 In addition, a Bid must include a purchase price that is in an amount equal to: (i) the cash
consideration set forth in the APA in the amount of \$500,000, plus (ii) the amount of the Break-up

1 Fee of \$25,000, plus (iii) the initial overbid amount of \$25,000; plus (iv) repayment of the amount
2 of the post-petition loan made by the Stalking Horse Bidder to the Debtor of up to \$100,000.

3 h. Other Terms. The Debtor may announce at the Auction additional procedural
4 rules (e.g., the amount of time to make subsequent Overbids) for conducting the Auction so long as
5 the rules are not inconsistent with the Bidding Procedures. The Debtor shall continue the Auction
6 until there is only one Qualified Bid that the Debtor determines, in consultation with the Subchapter
7 V Trustee, is the highest or otherwise best Qualified Bid at the Auction (the "Successful Bid"). The
8 Auction shall not close unless and until: (a) all Bidders who have submitted Qualified Bids have
9 been given a reasonable opportunity as determined by the Debtor in its sole discretion, to submit
10 an Overbid at the Auction to the then-existing Overbid; and (b) the successful bidder that submitted
11 the Successful Bid ("Successful Bidder") has submitted fully executed transaction documents
12 memorializing the terms of the Successful Bid. At the Sale Hearing, the Debtor shall present the
13 Successful Bid to the Bankruptcy Court for approval. The Debtor's presentation of the announced
14 Successful Bid to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of
15 the Successful Bid. The Debtor shall have accepted a Successful Bid only when the Bankruptcy
16 Court has approved such Bid.

17 i. Irrevocability of Certain Bids. If an Auction is conducted, the party the
18 Debtor, in consultation with the Subchapter V Trustee, has determined to have the second highest
19 or otherwise best Qualified Bid at the Auction shall be required to serve as a backup bidder (the
20 "Backup Bidder"). The Backup Bidder shall be required to keep its initial Qualified Bid (or its final
21 Overbid) (the "Backup Bid") open and irrevocable until the earlier of 5:00 p.m. (California time) on
22 the date that is forty-five days after the date of the Auction (the "Outside Backup Date") or the
23 closing of the transaction with the Successful Bidder.

24 j. Sale Hearing. On January 7, 2021 at 1:30 p.m.

25 k. Return of Deposit. The Good Faith Deposits of all Qualified Bidders required
26 to submit a Good Faith Deposit shall be held by the Debtor in a segregated account, but shall not
27 become property of the Estate unless forfeited according to these Bidding Procedures or otherwise
28 pursuant to further order of the Bankruptcy Court. The Good Faith Deposit of any Qualified Bidder
that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified
Bidder not later than five business days after the Sale Hearing. The Good Faith Deposit of the
Backup Bidder shall be returned to the Backup Bidder on the date that is five business days after the
earlier of (i) the closing of the transaction with the Successful Bidder and (ii) the Outside Backup
Date. If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit may be
credited towards its purchase price.

1 l. Failure to Close. If, following the Sale Hearing, the Successful Bidder fails
to consummate an approved transaction because of a breach or failure to perform on the part of such
Successful Bidder, the Debtor may designate the Backup Bidder to be the new Successful Bidder,
and the Debtor will be authorized (but not required) to consummate the transaction proposed in such
Backup Bid without further order of the Bankruptcy Court. In such case, the defaulting Successful
Bidder's Good Faith Deposit shall be forfeited to the Debtor, and the Debtor specifically reserves
the right to seek all available damages from the defaulting Successful Bidder. The Good Faith
Deposit of the Backup Bidder shall be held by the Debtor until five business days after the earlier
of (i) the closing of the transaction with the Successful Bidder and (ii) the Outside Backup Date.

2 m. Reservation of Rights. The Debtor reserves all rights to terminate the bidding
process at any time if the Debtor determines, in its business judgment, that the bidding process will
not maximize the value of the Purchased Assets for the Estate. In addition, the Debtor reserves all
rights not to submit any bid that is not acceptable to the Debtor for approval to the Bankruptcy Court.
The Debtor shall further have the right to amend these bidding rules or impose such other terms and
conditions for the bidding process that the Debtor determines, in its sole business judgment,

1 provided that such modifications are not inconsistent with any Bankruptcy Court order. Without
2 limiting the generality of the foregoing, the Debtor may reject at any time before entry of an order
3 of the Bankruptcy Court approving a Qualified Bid, any bid that, in the Debtor's sole discretion, is
(i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code
or the Bidding Procedures, or (iii) contrary to the best interests of the Estate and its creditors.

4 4. On or before the third business day after entry of this Order ("Bidding Procedures
5 Order"), the Debtor will cause both this Bidding Procedures Order, and the Notice of Auction and
6 Sale Hearing in substantially the form as attached as Exhibit 1 to the Sale Procedures Motion to be
7 sent by first-class mail postage prepaid, to the following: (i) the United States Trustee and the
8 Subchapter V Trustee, (ii) all Secured Creditors, (iii) all entities known to have expressed a bona
9 fide interest in acquiring all or substantially all of the Purchased Assets, and (iv) all parties who
10 have requested or are required to receive notice pursuant to Bankruptcy Rule 2002 as of the date of
11 the entry of the Bidding Procedures Order.

12 5. The Debtor is hereby authorized and empowered to (i) perform under, consummate,
13 and implement the Bidding Procedures and this Bidding Procedures Order, (ii) execute all
14 instruments and documents that may be reasonably necessary or desirable to implement the Bidding
15 Procedures and this Bidding Procedures Order, (iii) take all further actions as may be necessary or
16 appropriate for the purposes of implementing the Bidding Procedures and this Bidding Procedures
17 Order, and (iv) take such other and further steps as are contemplated by the Bidding Procedures and
18 this Bidding Procedures Order or reasonably required to fulfill the Debtor's obligations under the
19 Bidding Procedures and this Bidding Procedures Order, all without further order of the Court.

20 ///

21 ///


22 ///

6. The United States Bankruptcy Court for the Central District of California, Santa Ana Division, shall have and retain the sole and exclusive jurisdiction over any and all disputes arising or related to the Bidding Procedures and this Bidding Procedures Order.

IT IS SO ORDERED.

###

Date: December 3, 2020


Scott C. Clarkson
United States Bankruptcy Judge

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
100 Spectrum Center Drive, Suite 600, Irvine, CA 92618

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF SALE OF ESTATE PROPERTY [With Notice of the Motion and the Motion]** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) December 15, 2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Attorney for Debtor: James C Bastian jbastian@shulmanbastian.com

Interested Party: Nancy S Goldenberg nancy.goldenberg@usdoj.gov

Attorney for PMW: Bradford G Hughes bhughes@Clarkhill.com, mdelosreyes@clarkhill.com

Attorney for Pacific Premier Bank: Jacqueline L James jjames@hrhlaw.com

Attorney for Debtor: Melissa Davis Lowe mlowe@shulmanbastian.com, salarcon@shulmanbastian.com

Trustee: Mark M Sharf (TR) mark@sharfllaw.com, C188@ecfcbis.com; sharf1000@gmail.com

Interested Party: United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) December 15, 2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Judge's Copy:

U.S. Bankruptcy Court
Attn: Honorable Scott C. Clarkson
411 W. Fourth Street, Suite 5130
Santa Ana, CA 92701

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) December 15, 2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Objecting Party: Jason Medley, Esq.; Clark Hill PLC; Email: jmedley@clarkhill.com

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

December 15, 2020 Sandra Alarcon
Date Printed Name

/s/ Sandra Alarcon
Signature

EMAIL SERVICE LIST

Schedule F

LaRoy Group
Attn Bob Smitz
Bob.Smitz@laroygroup.com

Potential Bidder

Zoovilla Merry Products
Attn President
info@merryproducts.com

Potential Bidder

Guan
Attn Moises Lopez
moiseslopez@gaunsa.com

Potential Bidder

DailyDac
R Maria Shail
sstrait@financialpoise.com

US MAIL SERVICE LIST -CREDITORS AND PARTIES IN INTEREST

DEBTOR

INNOVATION PET INC
ATTN VICTORY COOPMAN, CEO
17011 BEACH BLVD SUITE 900
HUNTINGTON BEACH, CA 92647

UNITED STATES TRUSTEE

UNITED STATES TRUSTEE
411 WEST FOURTH STREET SUITE 7160
SANTA ANA, CA 92701

RFSN ON BEHALF OF LARoy GROUP

STACEY RABBINO ESQ
ROSENBLOOM LAW GROUP LLC
120 GIBALTAR ROAD SUITE 111
HORSHAM, PA 19044

**RFSN ON BEHALF OF PACIFIC
PREMIER BANK**

JACQUELINE L JAMES ESQ
HEMAR ROUSSO & HEALD LLP
15910 VENTURA BLVD 12TH FLOOR
ENCINO, CA 91436

RFSN ON BEHALF OF PMW LLC

JASON MEDLEY ESQ
CLARK HILL PLC
909 FANNIN SUITE 2300
HOUSTON, TX 77010

RFSN ON BEHALF OF PMW LLC

TIMTHOY M FLAHERTY ESQ
CLARK HILL PLC
ONE EMBARCADERO CENTER SUITE 400
SAN FRANCISCO, CA 94111

SCHEDULE E

INTERNAL REVENUE SERVICE
PO BOX 7346
PHILADELPHIA, PA 19101-7346

SCHEDULE D

INTERNAL REVENUE SERVICE
PO BOX 7346
PHILADELPHIA, PA 19101-7346

SCHEDULE E

CLAIM FILED
CALIFORNIA FRANCHISE TAX BOARD
BANKRUPTCY SECTION MS: A-340
PO BOX 2952
SACRAMENTO, CA 95812-2952

SCHEDULE E

CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION
ACCOUNT INFORMATION GROUP MIC:29
PO BOX 942879
SACRAMENTO, CA 94279-0029

SCHEDULE E

CALIFORNIA EMPLOYMENT DEVELOPMENT
DEPARTMENT
BANKRUPTCY GROUP MIC 92E
PO BOX 826880
SACRAMENTO, CA 94280-0001

NOTICE PURPOSES

US SECURITIES & EXCHANGE COMMISSION
ATTN BANKRUPTCY COUNSEL
444 SOUTH FLOWER ST SUITE 900
LOS ANGELES, CA 90071-2934

SCHEDULE D

PACIFIC PREMIER BANK
ATTN JOSH NAJARRO
17901 VAN KARMAN SUITE 1200
IRVINE, CA 92614

SCHEDULE D

PACIFIC PREMIER BANK
ATTN JOSH NAJARRO
17901 VAN KARMAN SUITE 1200
IRVINE, CA 92614

SCHEDULE D

CAPFLOW FUNDING GROUP MANAGERS
LLC
ATTN ANDREW J COON PRESIDENT
201 ROUTE 17 SUITE 805
RUTHERFORD, NJ 07070

SCHEDULE D

PMW LLC
ATTN KACEE LARSON
3575 RINGSBY CT #411
DENVER, CO 80216

SCHEDULE F

STETINA BRUNDA GARRED & BRUCKER
IP LAW
ATTN RENEE LAU
75 ENTERPRISE SUITE 250
ALISO VEJO, CA 92656

SCHEDULE F

VICTORIA COOPMAN
22187 PINE DRIVE
CEDERPINES PARK, CA 92322

SCHEDULE F

XIAMEN DADU CENTURY CO., LTD
ATTN AMY DADU
5F HAIYUN BLD NO 16 HAISHAN RD
HULI DIST XIAMEN, CHINA

**NOTICE FOR FUJIAN DUSHI WOOD
INDUSTRY AND XIAMEN DADU
CENTURY CO., LTD**

O&O INVESTIGATIONS INC
ATTN OLEG FLAKSMAN, PARTNER
10100 SANTA MONICA BLVD
LOS ANGELES, CA 90067

SCHEDULE F

REINE CASTILLO
4017 CHOWEN AVE S
MINNEAPOLIS, MN 55410

SCHEDULE F

VOCATIONAL IMPROVEMENT PROGRAM
INC
ATTN JEFF SPECCHIO
1310 EAST RIVERVIEW DRIVE
SAN BERNARDINO, CA 92408

SCHEDULE F

CENTERPOINT WAREHOUSE
ATTN JOSE FITZGERALD
PO BOX 140
GRANDVIEW, MO 64030

SCHEDULE G AND F

CORONADO INVESTORS PROPERTIES
LLC
ATTN HANS IMHOF GENERAL MANAGER
- WARNER MANAGEMENT
2850 S FARVIEW STREET
SANTA ANA, CA 92704

SCHEDULE D

CAPITAL 2 THRIVE LLC
ATTN JEFFREY LEE BARNETT, REGISTERED
AGENT FOR CAPITAL 2 THRIVE LLC
741 CORPORATE CIRCLE SUITE A
GOLDEN, CO 80401

SCHEDULE F

WORLDWIDE EXPRESS
ATTN FELICIA HUDAK
1720 SPILLMAN DRIVE SUITE 240
BETHLEHAM, PA 18015

SCHEDULE F

TERI AND JUSTIN JONES
ATTN ADAM CONNATSER
2929 CARLISLE ST
DALLAS, TX 75204

SCHEDULE F

LIBERTY MUTUAL INSURANCE
ATTN PRESIDENT
PO BOX 1604
NEW YORK, NY 10116-1604

SCHEDULE F

JAY CAMBARE
30001 GOLDEN LANTERN APT 63
LAGUNA NIGUEL, CA 92677

SCHEDULE F

SMH FINANCIAL SERVICES
ATTN SHARON HEISER
19200 VON KARMAN SUITE 600
IRVINE, CA 92612

SCHEDULE F

WUXI SHUANGZHEN
ATTN HE RONG FAN
SHUOFANG IND PARK
WUXI NEW DISTRICT, CHINA

SCHEDULE F

NIK TRANSPORT
ATTN PRESIDENT
10330 PIONEER BLVD #100
SANTA FE SPRINGS, CA 90670

SCHEDULE G

PETCO
INTERNATIONAL PET SUPPLIES &
DISTRIBUTION INC
PETCO ANIMA SUPPLIES STORES INC

ATTN PRESIDENT
9125 RECHCO ROAD
SAN DIEGO, CA 92121

SCHEDULE F

THE LOAN SOURCE
ATTN PRESIDENT
353 E 83RD ST
NEW YORK, NY 10029

SCHEDULE F

VICTORIA COOPMAN
22187 PINE DRIVE
CEDERPINES PARK, CA 92322

SCHEDULE F

NEW CONCEPTS INTERNATIONAL IND
LIMITED
ATTN THIERRY JACQUEMIN
UNIT 514
5/F KENNING IND BLDG NO 19
WANG HOI RD
KOWLOON BAY, HONG KONG

SCHEDULE F

FUJIAN DUSHI WOODEN INDUSTRY
ATTNPAUL DUSHI
SHAOWU ECON AND TECH DEV ZONE
FUJIAN, CHINA

SCHEDULE F

NATIONWIDE LOGISTICS
ATTN TRISTA KINMAN
PO BOX 14508
CINCINNATI, OH 45250

SCHEDULE F

THE MA PATERSON
ATTN PRESIDENT
840 MUSTANG DRIVE
GRAPEVINE, TX 76051

SCHEDULE F

GRAY PROCTOR & MCMANNIS
ATTN CHARLES PROCTOR
3991 MACARTHUR SUITE 240
NEWPORT BEACH, CA 92660

SCHEDULE F

SPS COMMERCE
ATTN ACCOUNTS RECEIVABLE RYAN ROSS
333 SOUTH SEVENTH ST SUITE 1000
MINNEAPOLIS, MN 55402

**SCHEDULE G
CLAIM FILED**

TRUE VALUE COMPANY LLC
ATTN JOHN C HAMMERLE
ASSOCIATE GENERAL COUNSEL
8600 WEST BRYN MAWR AVE
CHICAGO, IL 60631

SCHEDULE G

SEQUOIA INSURANCE COMPANY
ATTN PRESIDENT
800 SUPERIOR AVENUE EAST 21ST
FLOOR
CLEVELAND, OH 44114

EQUITY

TIMOTHY TAFT
762 HAGUE
ST PAUL, MN 55104

EQUITY

JUSTIN JONES
PO BOX 337
SPICEWOOD, TX 78669-0337

EQUITY

TERI P JONES
PO BOX 337
SPICEWOOD, TX 78669-0337

EQUITY

RAYMOND AND ANTOINETTE CLUBB
24 WHITECLOUD
IRVINE, CA 92614

EQUITY

ANDREA FARBER
237 N LARCH
ANAHEIM, CA 92805

RETURNED MAIL

EQUITY

JUSTIN JONES
1401 KENSINGTON COURT
SOUTHLAKE, TX 76092
**11/21/2020, SEE NEW ADDRESS
INFORMATION FROM USBC**

EQUITY

TERI P JONES
1401 KENSINGTON COURT
SOUTHLAKE, TX 76092
**11/21/2020, SEE NEW ADDRESS
INFORMATION FROM USBC**

SCHEDULE D

CAPITAL 2 THRIVE
ATTN PRESIDENT
1801 BROADWAY SUITE 1350
DENVER, CO 80202
**11/21/2020, USBC NOTIFIED THAT THIS
ADDRESS IS UNDELIVERABLE. SEE NEW
ADDRESS FROM THE COLORADO
SECRETARY OF STATE**

SCHEDULE G

TRUE VALUE COMPANY
ATTN PRESIDENT
MSC FINANCE DEPART
8600 WEST BRYN MAWR
CHICAGO, IL 80631
SEE PROOF OF CLAIM ADDRESS

US MAIL SERVICE LIST - POTENTIAL BIDDERS

POTENTIAL BIDDER

RS1INNOVATION INC.
ATTN INGRID ALONGI
1732 WAZEE STREET, SUITE 202
DENVER, CO 80202

POTENTIAL BIDDER

TRIXIE PET PRODUCTS INC
ATTN PRESIDENT
PO BOX 101196
FORT WORTH, TX 76185

POTENTIAL BIDDER

PETMATE
DOSKOCIL MANUFACTURING COMPANY
INC.
BRAD KANE, VICE PRESIDENT
2300 E RANDOL MILL ROAD
ARLINGTON, TX 76011

POTENTIAL BIDDER

WARE MANUFACTURING INC
STEPHEN WARE, PRESIDENT
1439 S. 40TH AVENUE
PHOENIX, AZ 85009

POTENTIAL BIDDER

PETSAFE
RADIO SYSTEMS CORPORATION
WILLIE WALLACE, CEO
10427 PETS SAFE WAY
KNOXVILLE, TN 37932

POTENTIAL BIDDER

CENTRAL GARDEN AND PET
JIM KOSKEY
1340 TREAT BLVD SUITE 600
WALNUT CREEK, CA 94597

POTENTIAL BIDDER

ANIMAL SUPPLY COMPANY LLC
DONALD P. MCINTYRE, PRESIDENT AND
CEO
600 E LAS COLINAS BLVD SUITE 700
IRVING, TX 75039

POTENTIAL BIDDER

PHILLIPS PET FOOD & SUPPLIES
MARK PATTERSON, VICE PRESIDENT
BUSINESS DEVELOPMENT
3747 HECKTOWN ROAD
EASTON, PA 18045

POTENTIAL BIDDER

MANNA PRO PRODUCTS LLC
JOHN HOWE, CEO
707 SPIRIT 40 PARK DR
CHESTERFIELD, MO 63005

POTENTIAL BIDDER

WORLDWIDE PET PRODUCTS
KEVIN FICK, CEO
160 MITCHELL BLVD
SAN RAFAEL, CA 94903

POTENTIAL BIDDER

LAROY GROUP
ELS LAROY
STACEY RABBINO ESQ
ROSENBLOOM LAW GROUP LLC

120 GIBRALTAR ROAD SUITE 111
HORSHAM, PA 19044

POTENTIAL BIDDER

CENTERPOINT LOGISTICS
JOE FITZGERALD, CEO
11971 GRANDVIEW ROAD
GRANDVIEW, MO 64030

POTENTIAL BIDDER

CHICKENGUARD
MARTIN HODSON, HEAD OF SALES &
MARKETING
UNIT 2 STATION YARD
WILBRAHAM RD
CAMBRIDGE, UNITED KINGDOM CB21
SET

POTENTIAL BIDDER

FRANDSEN CORPORATION-MILLER
DAN FERRISE, CEO
2910 WATERS ROAD SUITE 150
EAGAN, MN 55121

POTENTIAL BIDDER

CLAYTON DUBILLER & RICE
JOHN COMPTON, PARTNER
375 PARK AVENUE, 18TH FLOOR
NEW YORK, NY 10152

POTENTIAL BIDDER

TOBA CAPITAL
VINNY SMITH, FOUNDER
4675 MACARTHUR COURT, #650
NEWPORT BEACH, CA 92660

POTENTIAL BIDDER

CAMBRIDGE COMPANIES SPG
POLINA CHEBOTAREVA, PARTNER
660 NEWPORT CENTER DRIVE, STE. 710
NEWPORT BEACH, CA 92660-8026

POTENTIAL BIDDER

OKAPI VENTURE CAPITAL
MARC AVERITT, MANAGING DIRECTOR
1590 S. COAST HIGHWAY, STE. 10
LAGUNA BEACH, CA 92651-3256

POTENTIAL BIDDER

VISIONARY VENTURES FUND LLC
JEFFRY K. WEINHUFF, MANAGING
PARTNER
65 ENTERPRISE
ALISO VIEJO, CA 92656-2705

POTENTIAL BIDDER

HUNTINGTON VENTURES
SCOTT BURRI, GENERAL PARTNER
2050 MIAN STREET, 7TH FLOOR
IRVINE, CA 92614-8255

POTENTIAL BIDDER

MIRAMAR VENTURE PARTNERS
BRUCE HALLETT, MANAGING DIRECTOR
2101 E. COAST HIGHWAY, 3RD FLOOR
CORONA DEL MAR, CA 92625-1900

POTENTIAL BIDDER

LOTUS INNOVATIONS LLC
CHRISTIAN MACK, MANAGING PARTNER
4533 MACARTHUR BLVD., STE. 5068
NEWPORT BEACH, CA 92660-2059

POTENTIAL BIDDER

SAIL CAPITAL PARTNERS LLC
WALTER L. SCHINDLER,
FOUNDER/MANAGING PARTNER
3334 E. COAST HIGHWAY, STE. 351
CORONA DEL MAR, CA 92625-2328

POTENTIAL BIDDER

TRUE FAMILY ENTERPRISES
ALAN/TWILA TRUE, FOUNDER/CEO
FOUNDER
2260 UNIVERSITY DRIVE
NEWPORT BEACH, CA 92660-3319

POTENTIAL BIDDER

JMI EQUITY
PAUL BARBER, MANAGING GENERAL
PARTNER
7776 IVANHOE AVE., STE.200
LA JOLLA, CA 92037

POTENTIAL BIDDER

AVALON VENTURES
JAY LICHTER, PH.D.
11099 N. TORREY PINES ROAD, STE. 290
LA JOLLA, CA 92037

POTENTIAL BIDDER

CORRELATION VENTURES
DAVID COATS, MANAGING DIRECTOR
9255 TOWNE CENTRE DRIVE, STE. 350
SAN DIEGO, CA 92121

POTENTIAL BIDDER

TVC CAPITAL
JEB SPENSER, MANAGING PARTNER
11710 EL CAMINO REAL, STE. 100
SAN DIEGO, CA 92130

POTENTIAL BIDDER

ANZU PARTNERS
DAVID MICHAEL, MANAGING PARTNER
2223 AVENIDA DE LA PLAYA, STE. 204
LA JOLLA, CA 92037

POTENTIAL BIDDER

SILVER CANYON GROUP LLC
TIM KELLEHER, MANAGING PARTNER
12526 HIGH BLUFF DRIVE, STE.260
SAN DIEGO, CA 92130

POTENTIAL BIDDER

SOCIAL LEVERAGE
GARY BENITT, MANAGING PARTNER
2159 INDIA ST., STE. 200
SAN DIEGO, CA 92191

POTENTIAL BIDDER

MESA VERDE VENTURE PARTNERS
CAREY NG, MANAGING DIRECTOR
4225 EXECUTIVE SQUARE, STE. 600
LA JOLLA, CA 92037

POTENTIAL BIDDER

BLACKCOMB ADVISORS LLC
FRANK STONEBANKS, MANAGING
PARTNER
4440 STEVENS AVE., STE. 200
SOLANA BEACH, CA 92075

POTENTIAL BIDDER

SIMPLEXITY VENTURE STUDIO
CLIFF BORO, GENERAL PARTNER
437 HIGHWAY 101, STE. 212
SOLANA BEACH, CA 92106

POTENTIAL BIDDER

BLACKBIRD VENTURES
NEIL SENTURIA, CEO
2223 AVENIDA DE LA PLAYA, STE. 206
SAN DIEGO, CA 92037

POTENTIAL BIDDER

DOMAIN ASSOCIATES LLC
KIM KAMDAR, PARTNER
12481 HIGH BLUFF DRIVE, STE.150
SAN DIEGO, CA 92130

POTENTIAL BIDDER

CLEARVISION EQUITY
MITCH PATRIDGE, MANAGING PARTNER
4320 LA JOLLA VILLAGE DRIVE, UNIT 200
SAN DIEGO, CA 92122

POTENTIAL BIDDER

HCAP PARTNERS
TIM BUBNACK, MANAGING PARTNER
3636 NOBEL DRIVE, STE.401
SAN DIEGO, CA 92122

POTENTIAL BIDDER

BUNKER HILL CAPITAL
BRIAN KINSMAN, MANAGING PARTNER
12526 HIGH BLUFF DRIVE, STE. 320
SAN DIEGO, CA 92130

POTENTIAL BIDDER

TELEGRAPH HILL PARTNERS
PAUL GROSSMAN, PARTNER
2223 AVENIDA DE LA PLAYA, STE. 350A
SAN DIEGO, CA 92037

POTENTIAL BIDDER

CLOUDBREAK CAPITAL LLC
ANDREW B. DUMKE, CEO
6255 LA PINTURA DRIVE
LA JOLLA, CA 92037

POTENTIAL BIDDER

D2 EQUITY CAPITAL LLC
DENNIS DUNN, MANAGING MEMBER
122 15TH STREET, SUITE 1209
DEL MAR, CA 92014

POTENTIAL BIDDER

ELAN GROWTH PARTNERS LLC
CRAIG DUPPER, MANAGING PARTNER
1921 PALOMAR OAKS WAY, STE. 100
CARLSBAD, CA 92008